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

Under authority of Sections 63-2-204(2), and 63-2-904(2), and Title 63, Chapter 46a, this rule provides procedures for access and denial of access to government records.

R13-2-2. Definitions.

(1) "Records officer" means the individual appointed by the division to fulfill the function of Subsection 63-2-103(21).

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

R13-2-3. Records Officer.

Each division director shall comply with Section 63-2-903 and shall appoint a records officer to perform the following functions:

(a) The duties set forth in Section 63-2-903; and

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

R13-2-4. Requests for Access.

(1) Requests for access to records should be directed to the records officer of the division which the requester believes generated or possesses the records.

(2) The divisions of the department are as described in Sections 63A-1-109 and 63A-8-201 and are located as follow:

(a) Administrative Services Administration, State Office Building, Salt Lake City, Utah.

(b) Administrative Rules, State Office Building, Salt Lake City, Utah.

(c) Archives and Records Service, Archives Building, Salt Lake City, Utah.

(d) Facilities Construction and Management, State Office Building, Salt Lake City, Utah.

(e) Finance, State Office Building, Salt Lake City, Utah.

(f) Fleet Operations, State Office Building, Salt Lake City, Utah.

(g) Information Technology, State Office Building, Salt Lake City, Utah.

(h) Purchasing and General Services, State Office Building, Salt Lake City, Utah.

(i) Risk Management, 5120 State Office Building, Salt Lake City, Utah.

(j) Surplus Property, 522 South 700 West, Salt Lake City, Utah.

(k) Debt Collection, State Office Building, Salt Lake City, Utah.

(l) Utah Sports Authority, State Office Building, Salt Lake City, Utah.

(3) 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 (Section 63-2-101).

R13-2-5. Appeal of Agency Decision.

(1) If a requester is dissatisfied with the agency's initial decision, the requester may appeal the decision to the corresponding division director under the procedures of Section 63-2-401 et seq.

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

R13-2-6. Fees.

(1) A fee schedule for the direct costs of duplicating or compiling a record may be obtained from the division by contacting the records officer.

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

R13-2-7. Forms.

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

KEY: freedom of information, public information, confidentiality of information, access to information*
1994 63-2-101 et seq.
Notice of Continuation June 30, 1997

R13. Administrative Services, Administration.
R13-3. Americans with Disabilities Act Grievance Procedures.
R13-3-1. Authority and Purpose.

(1) This rule is made under authority of Subsection 63A-1-110(2) and Subsection 63-46a-3(3). As required by 28 CFR 35.107, the Utah Department of Administrative Services, as a public entity that employs more than 50 persons, adopts and publishes the grievance procedures within this rule for the prompt and equitable resolution of complaints alleging any action prohibited by Title II of the Americans with Disabilities Act of 1990 42 U.S.C. 12201 and 28 CFR Part 35, 1993 edition.

(2) The purpose of this rule is to implement the provisions of 28 CFR 35 which in turn implements Title II of the Americans with Disabilities Act of 1990, which provides that no qualified individual with a disability shall, by reason of this disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by the department.

R13-3-2. Definitions.

(1) "ADA Coordinator" means the employee assigned by the executive director the responsibility for investigating and facilitating prompt and equitable resolution of complaints filed by qualified persons with disabilities.

(2) "Department" means the department of administrative services.

(3) "Director" means the head of the division of the department of administrative services affected by a complaint filed under this rule.

(4) "Disability" means, with respect to a qualified individual with a disability, a physical or mental impairment that substantially limits one or more of the major life activities

of such an individual; a record of such an impairment; or being regarded as having such an impairment.

(5) "Executive Director" means the executive director of the department.

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

(7) "Qualified Individual with a Disability" means an individual with a disability, who with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the Department of Administrative Services.

R13-3-3. Filing of Complaints.

(1) Any qualified individual with a disability may file a complaint within 60 days of the alleged noncompliance with the provisions Title II of the Americans with Disabilities Act of 1990 or the federal regulations promulgated thereunder. Complaints shall be filed within 60 days to assure prompt, effective assessment and consideration of the facts and to allow time to pursue other available remedies, if necessary. However, any complaint alleging an act of discrimination occurring between January 26, 1992, and the effective date of this rule may be filed within 60 days of the effective date of this rule. The filing of a complaint or of a subsequent appeal is authorization by the complainant to allow necessary parties to review all relevant information, including records classified as private or controlled under the Government Records Access and Management Act (Section 63-2-101) and information otherwise protected by statute, rule, regulation, or other law.

(2) The complaint shall be filed with the ADA Coordinator in writing or in another accessible format suitable to the complainant.

(3) Each complaint shall:

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

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

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

(d) describe the action and accommodation desired; and

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

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

(4) If the complaint is not in writing, the ADA coordinator shall transcribe or otherwise reduce the complaint to writing upon receipt of the complaint.

R13-3-4. Investigation of Complaints.

(1) The ADA coordinator shall investigate complaints to the extent necessary to assure all relevant facts are collected and documented. This may include gathering all information listed in Subsection R13-3-3(3) of this rule if it is not made available by the complainant.

(2) The coordinator may seek assistance from the Attorney General's staff, and the department's human resource and budget staff in determining what action, if any, should be taken on the complaint. The ADA coordinator may also consult with the director of the affected division in making a recommendation.

(3) Before making any recommendation that would: (a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation; (b) require facility modifications; or (c) require reclassification or reallocation in grade; the coordinator shall consult with representatives from other state agencies that could be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General.

R13-3-5. Recommendation and Decision.

(1) Within 15 working days after receiving the complaint, the ADA coordinator shall recommend to the director what action, if any, should be taken on the complaint. The recommendation shall be in writing or in another accessible format suitable to the complainant.

(2) If the coordinator is unable to make a recommendation within the 15 working day period, he shall notify the complainant in writing or in another accessible format suitable to the complainant stating why the recommendation is delayed and what additional time is needed.

(3) The director may confer with the ADA coordinator and the complainant and may accept or modify the recommendation to resolve the cause of the complaint. The director shall decide within 15 working days. The director shall take all reasonable steps to implement his decision. The decision shall be in writing or in another accessible format suitable to the complainant.

R13-3-6. Appeals.

(1) The complainant may appeal the director's decision to the executive director within ten working days from the receipt of the decision.

(2) The appeal shall be in writing or in another accessible format reasonably suited to the complainant's ability.

(3) The executive director may name a designee to assist on the appeal. The ADA coordinator may not also be the executive director's designee for the appeal.

(4) The appeal shall describe in sufficient detail why the decision does not meet the complainant's needs without undue hardship to the department.

(5) The executive director or designee shall review the ADA coordinator's recommendation, the director's decision, and the points raised on appeal prior to reaching a decision. The executive director may direct additional investigation as necessary. Before making any decision that would: (a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation; (b) require facility modifications; or (c) require reclassification or reallocation in grade; the executive director shall consult with representatives from other state agencies that would be affected by the decision,

including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General.

(6) The executive director shall issue his decision within 15 working days after receiving the appeal. The decision shall be in writing or in another accessible format suitable to the complainant.

(7) If the executive director or his designee is unable to reach a decision within the 15 working day period, he shall notify the individual in writing or by another accessible format suitable to the complainant why the decision is being delayed and the additional time needed to reach a decision.

R13-3-7. Record Classification.

(1) Records created in administering this rule are classified as "protected" under Section 63-2-304.

(2) After issuing a decision under Section R13-3-5 or a decision upon appeal under Section R13-3-6, portions of the record pertaining to the complainant's medical condition shall be classified as "private" under Section 63-2-302 or "controlled" under Section 63-2-303, at the option of the ADA coordinator.

(a) The written decision of the division director or executive director shall be classified as "public," all other records, except controlled records under Subsection R13-3-7(2), classified as "private."

R13-3-8. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under the State Anti-Discrimination Complaint Procedures, the Federal ADA Complaint Procedures, or any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: grievance procedures, disabled persons
1993 63A-1-110(2)
Notice of Continuation January 8, 1998 63-46a-3(2)

R23. Administrative Services, Facilities Construction and Management.
R23-4. Suspension/Debarment From Consideration for Award of State Contracts.
R23-4-1. Purpose.

This rule sets forth the basis and guidelines for suspension or debarment from consideration for award of state contracts.

R23-4-2. Authority.

This rule is authorized under Subsection 63A-5-103(1), which directs the Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management, and Subsection 63-56-14(2), also authorizing the Building Board to make rules regarding the procurement of construction, architect-engineering services, and leases.

R23-4-3. Authority to Award Contracts Only to Responsible and Qualified Person.

(1) In accordance with the Utah Procurement Code, the director of the Division of Facilities Construction and Management shall let to the lowest responsible and qualified bidder any contract, except those for professional services; the judgment of the director as to the responsibility and qualifications of a bidder shall be conclusive, except in cases of fraud or bad faith.

(2) No bidder, offeror, person, supplier, contractor or subcontractor supplying services, materials or labor, who has been suspended or debarred, will be allowed to bid on or participate in activities related to state contracts until they have successfully completed the suspension or debarment period and have reestablished themselves as a responsible and qualified person.

R23-4-4. Causes for Suspension/Debarment and Procedure.

(1) The statutory authority and procedures for suspension/debarment are found in Section 63-56-48, which specifically sets out the causes for debarment.

(2) The procedures for suspension/debarment pursuant to Subsection 63-56-48(1) are as follows:

(a) The director, after consultation with the using agency and the Attorney General, may suspend a person from consideration for award of contracts for a period not to exceed three months if there is probable cause to believe that the person has engaged in any activity which may lead to debarment. If an indictment has been issued for an offense which would be a cause for debarment, the suspension, at the request of the Attorney General, shall remain in effect until after the trial of the suspended person.

(b) The person involved in the suspension and possible debarment shall be given written notice of the state's intention to initiate a debarment proceeding. The using agency and the Attorney General will be consulted by the director and may attend any hearing.

(c) The person involved in the suspension and debarment will be provided the opportunity for a hearing where he may present relevant evidence and testimony. The director may establish a reasonable time limit for the hearing.

(d) The director, following the hearing on suspension and debarment shall promptly issue a written decision, if it is not settled by written agreement.

(e) The decision shall state the specific reasons for the action taken, inform the person of his right to judicial or administrative review, and shall be mailed or delivered to the suspended and debarred person.

(f) The debarment shall be for a period as set by the Director of the Division of Facilities Construction and Management, but shall not exceed three years.

KEY: contracts, construction, construction disputes*
August 31, 1995 63A-5-103 et seq.
Notice of Continuation January 28, 1998 63-56-5
63-56-48

R23. Administrative Services, Facilities Construction and Management.
R23-5. Contingency Funds.
R23-5-1. Purpose.

(1) This rule establishes policies and procedures regarding contingency funds held by the Division.

(2) It provides guidelines for the source, use and reporting of contingency funds as provided in Title 63A, Chapter 5.

R23-5-2. Authority.

This rule is authorized under Subsection 63A-5-103(1)(e), which directs the Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management.

R23-5-3. Definitions.

(1) "Appropriated Funds" means funds appropriated to the Division for capital projects to be administered by the Division. This includes state funds such as the General Fund as well as proceeds from state General Obligation Bonds.

(2) "Board" means the State Building Board established under Title 63A, Chapter 5, Part 1.

(3) "Division" means the Division of Facilities Construction and Management established under Title 63A, Chapter 5, Part 2.

(4) "Non-appropriated Funds" means any funds which are provided for a project which are not Appropriated Funds.

(5) "Project Reserve" means the account provided for in Subsection 63A-5-209(2).

(6) "Statewide Contingency Reserve" means the account provided for in Subsection 63A-5-209(1)(c).

R23-5-4. Applicability.

(1) The provisions of this rule shall apply to all projects or portions of projects funded through Appropriated Funds.

(2) The provisions of this rule may by waived to the extent necessary in order to comply with specific requirements associated with the project funds such as specific legislative direction or requirements associated with state revenue bonds.

R23-5-5. General Provisions.

(1) The balances in the Statewide Contingency Reserve and the Project Reserve may be redirected to other purposes by the Legislature.

(2) New projects may not be initiated from the Statewide Contingency Reserve nor from the Project Reserve unless authorized by the Legislature. This prohibition does not apply to remedial work associated with previously authorized and completed projects.

(3) The Division may utilize any number of subaccounts required to maintain separate accounting of Appropriated Funds as required by the source of the funds.

R23-5-6. Funding of Statewide Contingency Reserve.

(1) All Appropriated Funds budgeted for contingencies shall be transferred to the Statewide Contingency Reserve upon their receipt by the Division. This includes budget elements previously referred to as "design contingency" and "project contingency."

(2) The Division shall budget for contingencies based upon a sliding scale percentage of the construction cost.

(a) For new construction, the sliding scale shall range from 4-1/2% to 6-1/2%.

(b) For remodeling projects, the sliding scale shall range from 6% to 9-1/2%.

(c) The sliding scale shall be approved by the Board and kept on file by the Division.

(d) When projects are funded from both Appropriated Funds and Non-appropriated Funds, the amount budgeted for contingencies shall be prorated so that only that portion associated with the Appropriated Funds' share of the project is transferred to the Statewide Contingency Reserve.

(e) Any remaining balance as of July 1, 1993 of Appropriated Funds budgeted for contingencies shall be transferred to the Statewide Contingency Reserve as provided in this rule.

R23-5-7. Use of Statewide Contingency Reserve.

(1) The Statewide Contingency Reserve may provide additional funding to a project when:

(a) necessary construction costs arise on projects after the construction has been bid;

(b) costs for other elements of a project exceed the amount budgeted; or

(c) necessary costs arise which were not budgeted for.

(2) As previously directed by the Legislature, unbudgeted costs included in Subsection R23-5-6(1)(c) may include legal services, insurance, surveys, testing and inspection, and bidding costs.

(3) The Statewide Contingency Reserve may be used to fund changes in scope only if the scope change is necessary for the proper functioning of the program that was provided for in the approved project scope. The Division shall take steps as necessary to minimize the utilization of the Statewide Contingency Reserve for scope changes.

(4) With the prior approval of the Board, the Statewide Contingency Reserve may be used to fund unanticipated costs on projects funded through Non-appropriated Funds.

R23-5-8. Funding of Project Reserve.

(1) After all major construction contracts for a project have been awarded, and after setting aside adequate reserves for any remaining construction work which was not included in the construction contracts, any remaining balance of Appropriated Funds in the construction budget shall be transferred to the Project Reserve.

(2) Upon completion of the project, any residual balance of Appropriated Funds in any budget category shall be transferred to the Project Reserve; however, if the residual balance is the result of a reduction in a contract balance which had previously been funded from the Statewide Contingency Reserve, the residual balance shall be transferred instead to the Statewide Contingency Reserve.

R23-5-9. Use of Project Reserve.

The Division may utilize the Project Reserve only for the award of construction contracts which exceed the available construction budget. This may only be done after a review of other options to bring the cost within available funding and a determination that this action is necessary in order to meet the intent of the project.

R23-5-10. Reporting Requirements.

(1) The five-year building plan published annually by the Board shall include a summary report on the Statewide Contingency Reserve and the Project Reserve. This report shall include information on each Reserve summarized as follows for the most recently completed fiscal year:

(a) beginning balance;

(b) increases and decreases by type; and

(c) ending balance.

(2) At least annually, the Division shall analyze the balance in each Reserve and the projected needs based on already approved projects and determine if the balance is in excess of or less than the projected need. The results of this analysis shall be reported to the Legislature in its regular session.

(3) The Division shall report regularly to the Board on the status of the Statewide Contingency Reserve and the Project Reserve.

KEY: buildings, contingency fund*
1994 63A-5-209 et seq.
Notice of Continuation January 28, 1998

R23. Administrative Services, Facilities Construction and Management.

R23-6. Value Engineering and Life Cycle Costing of State Owned Facilities Rules and Regulations.

R23-6-1. Purpose.

These rules implement Subsection 63A-5-103(1)(f) and 63-5-206(4).

It is the purpose of these rules to ensure that the state owned facilities shall be life cycle cost effective. To achieve this objective, Value Engineering and Life Cycle Cost Analysis is to be used in the facility design process by the Division of Facilities Construction and Management.

R23-6-2. Authority.

This rule is authorized under Subsection 63A-5-103(1)(e),

which directs the Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management.

R23-6-3. Definitions.

(1) Division: The Division of Facilities Construction and Management.

(2) Director: Director of the Division or designee

(3) GSF: Gross Square Feet

(4) Value Engineering: A structured methodology that analyzes functional requirements, identifies alternatives to perform these functions and evaluates the alternatives using Life Cycle Costing techniques.

R23-6-4. Scope.

To the extent appropriated by the legislature, Value Engineering will be applied to achieve cost effective design solutions and informed decision making by the Division, for the following activities:

TABLE

A.	PROGRAMMING	
1.	Site Selection	as feasible
2.	Existing Facilities	Over 30,000 GSF
3.	Energy Conservation	Always
4.	New Facilities	Over 30,000 GSF
B.	DESIGN FOR CONSTRUCTION	
1.	New Construction	Over 30,000 GSF
2.	Renovation	Over 30,000 GSF
3.	Energy Conservation	Always

Only facilities which fall below these area requirements will be automatically exempted. Other projects may be subjected to Life Cycle Cost Analysis at the discretion of the Director.

R23-6-5. Special Exemption Procedures.

Upon written request by the Director, the Building Board may issue a special exemption for a facility from meeting the Life Cycle Costing requirements of these rules. The Director's special exemption request shall include a full justification.

After reviewing the special exemption request, the Building Board will approve or disapprove the Director's request. Board approval shall be based on the findings that the public interest is best served by approval of the exemption.

R23-6-6. Methodology.

One or more methods of economic evaluation may be used as appropriate to assess the Life Cycle Cost effectiveness for each of the activities identified in Section R23-6-4. Methods may include, but are not limited to:

(1) Standard practice for measuring Total Life Cycle Cost of building systems. American Society for Testing and Materials (ASTM designation E917-93).

(2) Recommended practice for measuring Net Present Value and Internal Rates of Return for Investments in buildings and building systems. National Institute of Standards and Technology (NBSIR 83-2657).

(3) Recommended practice for measuring Simple and Discounted Payback for Investments in buildings and building systems. National Institute of Standards and Technology (NBSIR 84-2850).

(4) Standard practice for measuring Benefit to Cost and Savings to Investment Ratios for buildings and building systems. American Society for Testing Materials (ASTM E964-93).

R23-6-7. Application.

(1) The Division will issue Life Cycle Cost Guidelines for use by Fee Architect/Engineers and Consultants which will include:

(a) Rules;

(b) Basis for the calculation of Total Life Cycle Costing;

(c) Guidance on sources of data for calculation;

(d) Requirements for Life Cycle Cost analysis.

(2) The Division will issue specific instructions at the outset of each project describing the extent of Value Engineering or Life Cycle Cost analysis required for the project.

(3) The Division will use an independent Value Engineering Program to review the fee Architect/Engineer's design and use Value Engineering techniques to assist in identifying alternative viable design options to be subject to Life Cycle Cost analysis.

R23-6-8. Responsibilities.

(1) The Division shall:

(a) Manage and monitor the implementation of the Value Engineering and Life Cycle Costing program.

(b) Recommend budgets to the legislature to:

(i) Fund Value Engineering and Life Cycle Costing analysis for programming activity.

(ii) Fund Value Engineering and Life Cycle Costing analysis for Design and Construction Activity.

(c) Select suitably trained and qualified persons to conduct the Value Engineering and Life Cycle Costing Analysis program.

(d) Develop methods for evaluating, selecting, and implementing preferred alternatives from the output of the Value Engineering and Life Cycle Costing program.

KEY: construction costs, public buildings*
1995 63A-5-103 et seq.
Notice of Continuation January 28, 1998

R23. Administrative Services, Facilities Construction and Management.

R23-7. Utah State Building Board Policy Statement Master Planning.

R23-7-1. Purpose.

The purpose of this rule is to require agency planning for future capital facilities expansion and to establish a more effective tool for projecting future capital facilities needs for the state.

R23-7-2. Authority.

This rule is authorized under Subsection 63A-5-103(1)(e), which directs the Building Board to make rules necessary for the discharge of the duties of the Division of Facilities

Construction and Management.

R23-7-3. Policy.

The Building Board requires that each agency prepare and maintain in current form, a Master Plan for all existing and planned capital facilities.

The Building Board will review of agency Master Plans whenever considering requests for project funding. Review will also take place to assist agencies on long-term planning. It is expected that Master Plans will present a realistic perspective of future growth that corresponds with projected program needs.

KEY: planning-programming-budgeting, state office buildings, public buildings, state planning*
1994 63A-5-103 et seq.
Notice of Continuation January 28, 1998

R23. Administrative Services, Facilities Construction and Management.
R23-8. Planning Fund Use.
R23-8-1. Purpose.

This Rule provides guidelines for the use of Planning Funds.

R23-8-2. Authority.

This rule is authorized under Subsection 63A-5-103(1)(e), which directs the Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management.

R23-8-3. Policy.

It is the policy of the Utah State Building Board that the revolving planning fund provided for in Section 63A-5-211, be utilized by the Division of Facilities Construction and Management to enhance the planning, programming, and estimation processes for institutions and agencies requiring buildings. Planning fund applications may address the following areas:

Develop statewide and institutional Master Plans.

Develop architectural programs in keeping with needs projections incorporated in the Master Plans for Capital Development and Improvement Projects to be presented for funding.

Develop accurate estimates for Capital Development and Improvement Projects to be presented to the Legislature for funding.

Develop standard programs for prototypical building types where compatible with the agency programs as stated in their comprehensive General Plans.

Perform building evaluations.

Any expenditure in excess of $20,000 must be approved in advance by the Board. DFCM shall report to the Board monthly on the status of the Planning Fund.

Reimbursements to the planning fund shall be made from capital projects which are related to that planning.

KEY: planning-programming-budgeting, budgeting, public buildings
1994 63A-5
Notice of Continuation January 28, 1998

R23. Administrative Services, Facilities Construction and Management.
R23-9. Building Board State/Local Cooperation Policy.
R23-9-1. Purpose.

This rule provides for cooperation with local zoning ordinances when siting, designing, or constructing state facilities, and provides procedures in the event this is not possible.

R23-9-2. Authority.

This rule is authorized under Subsection 63A-5-103(1)(e), which directs the Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management.

R23-9-3. Policy.

In the siting, design, or construction of state facilities, the fee architect/engineer and Division of Facilities Construction and Management staff should cooperate with local zoning ordinances. Particular effort will be made to consider local ordinances dealing with fire protection, ingress, egress, parking, landscaping, fencing, buffering, traffic circulation, pedestrian circulation, storm water and flood control, and connection to public improvements such as sewer, water, electricity, and gas. If it is not possible to comply with local zoning ordinances, the Division of Facilities Construction and Management Director will investigate the circumstances in an effort to mitigate any negative effects. At the discretion of the Director, the issue may be brought before the Board for review.

KEY: zoning
1994 63A-5-103
Notice of Continuation January 28, 1998

R23. Administrative Services, Facilities Construction and Management.
R23-10. Naming of State Buildings.
R23-10-1. Purpose.

This rule defines which agencies have the authority to name state buildings.

R23-10-2. Authority.

This rule is authorized under Subsection 63A-5-103(1)(e), which directs the Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management.

R23-10-3. Policy.

Consistent with Section 63A-5-204, it is the policy of the Utah State Building Board that the governmental entity which has ownership of a given facility has responsibility for providing

an appropriate name for that facility, if the facility is of a significant size or function and the entity deems the naming of the facility to be appropriate. Specifically, the Building Board will have responsibility for naming those buildings which are owned by the Division of Facilities Construction and Management, the Board of Regents will approve building names for colleges and universities, and the State Board of Education will approve names for state public education facilities. Also consistent with Section 63A-5-204, the Office of Trust Administrator, the Department of Transportation, the Board of State Lands, the Division of Expositions, the Department of Natural Resources, and the Utah National Guard are authorized to name facilities which are non-administrative in nature, such as state park facilities, transportation facilities, etc. If requested, agencies which exercise this prerogative are to provide a copy of internal rules or procedures which they follow in this process to the State Building Board.

KEY: buildings, naming process*
1994 63A-5-103 et seq.
Notice of Continuation January 28, 1998

R23. Administrative Services, Facilities Construction and Management.
R23-11. Facilities Allocation and Sale Procedures.
R23-11-1. Purpose.

This rule provides the procedure for disposition of under-utilized facilities.

R23-11-2. Authority.

This rule is authorized under Subsection 63A-5-103(1)(e), which directs the Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management.

R23-11-3. Procedures.

Facilities allocation decisions by the State Building Board will be based upon information included in the agency facility master plan. The Building Board has established a policy of regular master plan review, which shall include an analysis of how efficiently existing facilities are being used. The review may indicate, or an agency may independently determine that there is a surplus or under utilized facility. The Division of Facilities Construction and Management will then determine if the facility could be used by other agencies. If so, the Division will negotiate a transfer of use with the affected agencies. If no alternative use is appropriate, the Division of Facilities Construction and Management with the approval of the Director of the Division of Finance will declare the facility surplus and sell the property. The sale proceeds will be disposed of in accordance with applicable statute. In all cases, the Division will consult with all affected agencies to assure an equitable resolution.

If the Division of Facilities Construction and Management determines that land is under-utilized, and if the Building Board has not approved a master plan for that site, the Division has jurisdiction to otherwise reallocate the land use.

KEY: buildings, space utilization*
1994 63A-5-103 et seq.
Notice of Continuation January 28, 1998

R23. Administrative Services, Facilities Construction and Management.
R23-21. Division of Facilities Construction and Management Lease Procedures.
R23-21-1. Purpose and Authority.

(1) As provided in Subsection 63-56-14(1), this rule establishes procedures for the procurement of leasing of real property.

(2) The Building Board's authority to adopt rules for the activities of the Division is set forth in Subsection 63A-5-103(1)(e).

(3) The statutory provisions governing the procurement of leasing of real property by the Division are contained in Title 63, Chapter 56; Title 63A, Chapter 5; and Title 4, Chapter 1.

R23-21-2. New Leases.

A. Agency Request and Justification

An agency requesting leased space must submit a request and justification statement to the Division of Facilities Construction and Management (DFCM) preferably at least six months before the required date of occupancy. A space utilization program should be prepared by the agency. Assistance is available, if needed, from the staff of the DFCM. The staff of DFCM, along with the agency, will review the program and criteria for the space requested.

The justification statement should include the following:
Planned agency use
Present agency location
Proposed area or location of new lease
Any options that should be considered
Lease term
Present lease rate and what services are included
Present square footage
Requested square footage

B. Securing Space

If a new lease is required, an advertisement will be prepared by DFCM and competitive proposals will be solicited to comply with the State Procurement Code. Proposals will be reviewed jointly by the DFCM staff and the agency.

The review will include compliance to codes that are required by state and federal laws.

C. Negotiations

DFCM will negotiate, or may allow the agency to participate in the negotiations, so that space can be leased in the best interest of the agency and the state.

D. Lease Agreements

A standard lease agreement has been prepared for use by DFCM. An approved alternate may be used. The lessor, agency, and staff of DFCM should be involved in the preparation of the final written lease agreement.

E. Lease Approval and Processing

The lease will be distributed for approval signatures of the Lessor, the Agency Budget Officer, the Agency Director, the

Attorney General, and DFCM.

The lease will be recorded by DFCM on a computerized lease file for updating, renewal and control.

Approval of the Division of Finance is required to establish a payment schedule and issue a contract number.

R23-21-3. Renewal of Leases and Options.

DFCM will notify each agency at least six months in advance as to the expiration date of the lease. DFCM will consult with the agency on whether to renew an existing lease or seek new space. This will be based on space requirements and needs of the agency.

If the agency decides to renew a lease, they must submit a request to the Division of Facilities Construction and Management at least 120 days prior to the expiration date. If the leased space is conducive to the agency needs, then long-term leasing should be considered. Previously outlined procedures shall be followed for lease renewals and options that agencies may wish to exercise.

R23-21-4. Lease Advertisement Procedures and Specifications.

The Procurement Code requires that any agency wanting to lease new space must advertise for competitive proposals. Listed below, and in the following attachments, are the advertisement requirements of the Division of Facilities Construction and Management (DFCM).

A. Parties interested in submitting a proposal must complete a Schedule A, which is an Offeror/Lessor Proposal Sheet, and submit to DFCM before the advertised deadline.

B. The agency must submit to DFCM a Schedule B, which contains the Specifications for Advertisement of Space which DFCM will send to interested parties upon request. The advertisement will run for a period of three consecutive weekends. Materials required for advertisement must be received by DFCM no later than noon on Monday in order for the advertisement to be in the paper the following weekend.

R23-21-5. Non-State Tenants Utilizing State-Owned Space.

A. Request and Justification

A non-state or private company requesting to lease space in a state-owned facility must submit a request and justification statement to the Division of Facilities Construction and Management (DFCM) with reasonable notice prior to required date of occupancy. The criteria to evaluate the request of the non-state or private company shall include the following:

Planned use of the space

Proposed area or location of the lease

Any options that should be considered

Lease term

Lease rate and what services are included

Requested square footage

Projected use by a state agency of the space requested

B. Securing Space

Proposals will be reviewed jointly by the DFCM staff and the Agency.

Available space should be included in the master plan of all state agencies that is presented to the Utah State Building Board.

C. Negotiations

DFCM will negotiate, or may allow the agency(ies) to participate in the negotiations, so that state-owned space can be leased in the best interest of the state and at such rates that are consistent with similar private facilities taking into consideration such things as location, etc.

D. Lease Agreements

Using a standard lease agreement as prepared for use by DFCM, the non-state tenant, state agency using proposed facility, and staff of DFCM shall be involved in the preparation of the final written lease agreement.

E. Lease Approval and Processing

The lease will be distributed by DFCM for approval signatures and processing.

KEY: leases, leasing services
March 3, 1995 63A-5-103 et seq.
Notice of Continuation January 28, 1998

R23. Administrative Services, Facilities Construction and Management.

R23-24. Capital Projects Utilizing Non-appropriated Funds.

R23-24-1. Purpose.

To establish the policy of the Utah State Building Board relative to projects which are funded partially or totally by non-appropriated funds; establishing requirements for verification of funding and the timing of reimbursements to DFCM for expenditures made.

R23-24-2. Authority.

This rule is authorized under Subsection 63A-5-103(1)(e), which directs the Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management.

R23-24-3. Background.

The Division of Facilities Construction and Management (DFCM) is charged with the responsibility of administering the design and construction of capital facilities costing over $100,000 for all state agencies and institutions regardless of funding source. The only exception to DFCM's administration is when a project is delegated to an agency or institution by the Utah State Building Board.

When projects are funded through Legislative appropriation, the funding is generally made available to DFCM prior to entering into contracts on those funds. However, many projects receive all or a part of their funding from other sources. Examples of these sources include donations, auxiliary funds, discretionary funds, reimbursed overhead, revenue bonds, and federal funds. In addition, some projects are made as a joint effort between state agencies or institutions and local governmental units. In these situations, DFCM needs to receive adequate assurance that the funding is in fact in place and that it will be reimbursed for expenditures as they are made.

R23-24-4. Policy.

The following policy will apply to all projects funded in whole or in part by non-appropriated funds.

(1) Before initiating the project, an executive having the authority to bind the agency or institution shall provide DFCM with a letter stating the funding to be provided by the agency or institution and committing to reimburse DFCM in accordance with this policy. In the case of a joint project with a non-state entity, a formal agreement shall be entered into.

(2) Prior to bidding the construction of the project, the agency or institution must provide DFCM with the following:

(a) A breakdown of the funding for the project showing the amount of cash available, the amount outstanding on legally enforceable contracts and commitments payable to the agency or institution and dedicated to the project, and the remaining difference.

(b) An explanation will be provided regarding how and when the remaining difference will be obtained. This difference may not exceed 25% of the project funding. DFCM reserves the right to require that a higher percentage of the funding be available if it determines that this is necessary to protect the state's interests.

(c) The agency or institution may commit that it will cover the remaining difference from other funds available to it until the full funding is obtained as long as this commitment is within the legal and financial capability of the agency or institution.

(d) Any exception to this policy must be approved by the Utah State Building Board and the state Director of Finance.

(3) The agency or institution will be responsible for providing its proportionate share of the funding. If the funding sources anticipated by the agency or institution do not meet its share of costs, the agency or institution must either provide alternate sources of funding or reduce the cost of the project to bring it back within the level of available funding.

(4) Any non-monetary assets donated as a funding source must be liquidated by the institution prior to the bidding of construction. Exceptions may be granted by the Utah State Building Board and the state Director of Finance when alternate funding can be assured.

(5) It is the responsibility of the agency or institution to inform DFCM immediately of any restrictions on the funding provided, including federal grants or donor restrictions.

(6) Agencies and institutions will be required to reimburse DFCM for their share of expenditures ratably throughout the project. An exception may be made if the agency or institution is providing funding for a specific element of the project such as equipment, furnishings, or fountains. This exception will not be granted if the funding is for items which are a basic and necessary element of the construction of the project.

(7) DFCM will submit monthly billings to agencies and institutions for their share of the expenditures made. Payment will be due back to DFCM within 16 working days of the billing date or the mailing date whichever is later. DFCM will notify the state Division of Finance of any billings not paid within seven days of the due date. The Division of Finance may deduct any delinquent invoices for DFCM from the next appropriation allotment to the institutions or transfer the funds to DFCM as may be appropriate. Before taking any action, the Division of Finance will consult with the governing body or head of the agency or institution as appropriate.

KEY: buildings

1994 **63A-5-206(5)**

Notice of Continuation January 28, 1998

R58. Agriculture and Food, Animal Industry.
R58-19. Compliance Procedures.
R58-19-1. Authority.

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

R58-19-2. 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, animal health, safety or welfare, and warrants prompt action pursuant to Section 63-46b-20.

Emergency orders include: "quarantine", "seized", "Utah Inspection and Condemned", "sealed", "reject", "retain", "denatured", "detained", and "suspect", 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 4-32-7, 4-32-16, 4-32-17, 4-31-17, 4-39-107, and 9 CFR-III 303.1 through 381.207.

(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.

R58-19-3. Emergency Order.

The Division may issue an emergency order when it determines that there is an immediate and significant danger to public health, animal health, safety or welfare 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).

This 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.

R58-19-4. 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 to the findings of fact as determined by the division,

(4) a penalty or fine amount,

(5) the signature of the agency representative,

(6) a space or 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:

TABLE
Penalty Amounts

1	Citation per violation	$75
2	Citation per head	$ 2
(If not paid within 15 days, 2 times citation amount)		
(If not paid within 30 days, 4 times citation amount)		

R58-19-5. 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
January 15, 1998 4-2-2(j)

R68. Agriculture and Food, Plant Industry.
R68. 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 (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 63-46b-20.

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 table.

TABLE

TYPES OF VIOLATION	FIRST VIOLATION	SECOND VIOLATION	THIRD VIOLATION
Labeling	$300 - $500	$500 - $1,000	Hearing
Distribution	$300 - $500	$500 - $1,000	Hearing
Records	$100 - $300	$300 - $800	Hearing
Licensing-Registration	$200 - $400	$400 - $900	Hearing
Advertising	$100 - $300	$300 - $800	Hearing
Application/Use	$300 - $500	$500 - $1,000	Hearing
Quarantines/Orders	$300 - $500	$500 - $1000	Hearing

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
January 15, 1998 4-2-2(j)

R70. Agriculture and Food, Regulatory Service.
R70-201. Compliance Procedures.
R70-201-1. Authority.

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

R70-201-2. 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, animal health, safety or welfare, and warrants prompt action pursuant to Section 63-46b-20.

Emergency orders include: "quarantine", "seized", "Utah Inspection and Condemned", "sealed", "reject", "retain", "denatured", "detained", and "suspect", 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 4-3-6, 4-3-9, 4-5-5(1)(a), 4-9-6, 4-9-7, 4-10-11(1) and 4-33-8(1).

(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.

R70-201-3. Emergency Order.

The Division may issue an emergency order when it determines that there is an immediate and significant danger to public health, animal health, safety or welfare 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).

This 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.

R70-201-4. 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 to the findings of fact as determined by the division,

(4) a penalty or fine amount,

(5) the signature of the agency representative,

(6) a space or 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:

TABLE
PENALTY AMOUNTS

VIOLATION CATEGORY	1st OCCURRENCE	2nd OCCURRENCE
Misbranding	$0 - $1,000	Hearing
Adulteration	$0 - $1,000	Hearing
Labeling	$0 - $1,000	Hearing
Incorrect Weight	$0 - $1,000	Hearing
Incorrect Measure	$0 - $1,000	Hearing
Unlicensed	$0 - $1,000	Hearing

R70-201-5. 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
January 15, 1998 **4-2-2(j)**

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

These rules are known as the "Professional Engineers and Professional Land Surveyors Licensing Act Rules".

R156-22-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 22, as used in Title 58, Chapters 1 and 22, or these rules:

(1) "Complete and final" as used in Subsection 58-22-603(1) 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" means one or more individuals who are working or providing services for compensation paid in the form of wages or salary from which there is withheld or should be withheld income taxes or social security taxes under applicable law.

(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) "Full time" means a minimum of 30 hours per week for periods of time not less than 10 weeks in length.

(6) "Qualifying experience for licensure as a professional engineer" as used in Section R156-22-203 means full time professional engineering performed by an applicant for licensure as a professional engineer requiring the application of the engineering sciences in the investigation, planning, design and construction of engineering works and systems performed under the supervision of a licensed professional engineer.

(7) "Qualifying experience for licensure as a land surveyor" as used in Section R156-22-205 means full time professional land surveying performed by an applicant for licensure as a professional land surveyor requiring actual field and office time spent monumenting property boundaries, platting and laying out lands and subdivisions, recording plats and keeping accurate records and field notes performed under the supervision of a licensed professional land surveyor.

(8) "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 suveryors, and whose licensure requirements include:

(a) Professional Engineer.

(i) a bachelors or post graduate degree in engineering or equivalent education as determined by the NCEES Foreign Engineering Education Evaluation Program and four years of full time engineering experience under supervision of one or more licensed engineers; or eight years of full time engineering experience under supervision of one or more licensed professional engineers; and

(ii) passing the NCEES Principles and Practice of Engineering Examination or passing a professional engineering examination that is substantially equivalent to the NCEES Principles and Practice of Engineering Examination.

(b) Professional Structural Engineer.

(i) a bachelors or post graduate degree in engineering or equivalent education as determined by the NCEES Foreign Engineering Education Evaluation Program and four years of full time engineering experience under supervision of one or more licensed engineers; or eight years of full time engineering experience under supervision of one or more licensed professional engineers;

(ii) passing the NCEES Principles and Practice of Engineering Examination - Civil or passing a professional engineering examination that is substantially equivalent to the NCEES Principles and Practice of Engineering Examination - Civil;

(iii) passing the NCEES Structural I and II Examination or passing a professional engineering examination that is substantially equivalent to the NCEES Structural I and II Examination; and

(iv) 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 NCEES Foreign Engineering Education Evaluation Program 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 or passing a professional land surveying examination that is substantially equivalent to the NCEES Principles and Practice of Land Surveying Examination.

(9) "Responsible charge" as used in Subsections 58-22-102(7) and 58-22-305(7) means direct control and management by a principal over the practice of professional engineering, professional structural engineering or professional land surveying by an organization.

(10) "TAC/ABET" means Technology Accreditation Commission/Accreditation Board for Engineering and Technology.

(11) "Unlicensed employees, subordinates, associates, or drafters of a person licensed under this chapter" as used in Subsection 58-22-305(4) means persons not licensed as a professional engineer, professional structural engineer, or professional land surveyor, who perform professional engineering or professional land surveying services under the supervision of a licensed professional engineer, professional structural engineer or professional land surveyor, and who do not offer professional engineering or professional land surveying services directly to the public.

(12) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 22, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-22-601.

R156-22-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 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.

R156-22-201. Engineering Program Criteria.

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:

(1) The engineering program shall be accredited by EAC/ABET or the Canadian Engineering Accrediting Board.

(2) The post graduate engineering degree is earned from an institution which offers a bachelors or masters degree in an engineering program accredited by EAC/ABET.

(3) If the degree was earned in a foreign country, the engineering curriculum shall be determined to be substantially equivalent to a EAC/ABET accredited program by the NCEES Foreign Engineering Education Evaluation Program.

R156-22-202. Qualifying Experience Requirements for Licensure as a Professional Engineer - Supervision of Construction Work Not Qualifying Experience - Verifications Required.

In accordance with Subsection 58-22-302(1)(e), the qualifying experience requirements for licensure as a professional engineer are established as follows:

(1) Each applicant shall complete four years of qualifying experience in professional engineering approved by the division in collaboration with the board in accordance with the following:

(a) Up to one year of qualifying experience may be obtained while enrolled in an engineering program meeting the criteria set forth in Section R156-22-201.

(b) Unlimited qualifying experience may be obtained after meeting the education requirements.

(c) A maximum of three of the four years of qualifying experience may be approved by the board for persons who complete one or more of the following:

(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.

(iii) A maximum of one year of qualifying experience may be granted for completion of a masters degree in engineering from an institution which offers a bachelor of science degree accredited by EAC/ABET, when the degree is the second professional engineering degree conferred.

(iv) A maximum of two years of qualifying experience may be granted for completion of a doctorate degree in engineering from an institution which offers a bachelor of science degree accredited by EAC/ABET, when the degree is the second professional engineering degree conferred.

(2) An applicant who was unsuccessful in obtaining licensure by experience before July 1, 1996, but who passed the NCEES Fundamentals of Engineering Examination and completed four years of qualifying experience before July 1, 1996, and who thereafter completes the education requirements in Section R156-22-201, may receive credit for the qualifying experience obtained before July 1, 1996 regardless of the requirements of Subsection (1).

(3) The performance or supervision of construction work as a contractor, foreman or superintendent is not qualifying experience for licensure as a professional engineer.

(4) Each applicant shall submit a minimum of three verifications of qualifying experience on forms available from the division from licensed professional engineers who have provided supervision or who have personal knowledge of the applicant's knowledge, ability and competence to practice professional engineering.

R156-22-203. Experience Requirements for Licensure as a Professional Structural Engineer.

(1) In accordance with Subsection 58-22-302(2)(e), each applicant shall submit a minimum of three verifications of professional structural engineering experience on forms available from the division from licensed professional engineers or professional structural engineers who have personal knowledge of the applicant's knowledge, ability and competence to practice professional structural engineering, which experience is in addition to the qualifying experience required for licensure as a professional engineer.

(2) Professional structural engineering experience shall include responsible charge of structural design in one or more of the following areas:

(a) structural design of any building or structure two stories and more, or 45 feet in height, designed in Uniform Building Code (UBC) seismic zones 2, 3, or 4;

(b) structural design for a major seismic retrofit/rehabilitation of an existing building or structure in UBC seismic zones 2, 3, or 4; or

(c) structural design of any other structure of comparable structural complexity.

(3) Professional structural engineering experience shall include responsible charge of structural design in all of the following areas:

(a) use of three of the following four materials as they relate to the design, rehabilitation or investigation of buildings or structures:

(i) steel;

(ii) concrete;

(iii) wood; or

(iv) masonry;

(b) 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;

(c) selection of foundation systems including the consideration of alternatives and the selection of an appropriate type of foundation system to support the structure;

(d) design and detailing for the transfer of forces between stories in multi-story buildings or structures;

(e) application of lateral design in the design of the buildings or structures in addition to any wind design requirements; and

(f) application of the local, state and federal code requirements as they relate to design loads, materials, and detailing.

R156-22-204. Examination Requirements for Licensure as a Professional Engineer.

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:

(1) the NCEES Fundamentals of Engineering ("FE") Examination with a passing score as established by the NCEES;

(2) upon completion of the qualifying experience requirement, the NCEES Principles and Practice of Engineering ("PPE") Examination with a passing score as established by the NCEES; and

(3) the Utah Law and Rules Examination with a score of at least 75.

R156-22-205. Examination Requirements for Licensure as a Professional Structural Engineer.

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:

(1) the NCEES Fundamentals of Engineering Examination with a passing score as established by the NCEES;

(2) the NCEES Principles and Practice Examination in the category of civil or structural with a passing score as established by the NCEES;

(3) the NCEES Structural I and Structural II Examinations with a passing score as established by the NCEES or the 16 hour California Structural Examination with a passing score as established by the California engineering board; and

(4) the Utah Law and Rules Examination with a passing score of at least 75 except for individuals who may have already passed a previous edition of the same examination for licensure as a professional engineer.

R156-22-301. Equivalent Land Surveying Program for Licensure as a Professional Land Surveyor.

In accordance with Subsection 58-22-302(3)(d), an equivalent land surveying program for licensure as a professional land surveyor is defined as an earned bachelors or masters degree from a curriculum related to land surveying and completion of a minimum of 32 quarter hours or equivalent semester hours of course work in land surveying which shall include the following courses:

(i) boundary law;

(ii) writing legal descriptions;

(iii) public land survey system; and

(iv) surveying field techniques.

R156-22-302. Qualifying Experience Requirements for Licensure as a Professional Land Surveyor - Verifications Required.

In accordance with Subsections 58-22-302(3)(e) and (f), qualifying experience for licensure as a professional land surveyor is defined, clarified or established as follows:

(1) Applicants who have met the education requirements in Subsection 58-22-302(3)(d) shall document four years of qualifying experience in land surveying which experience may be obtained before, during or after completing the education requirements for licensure.

(2) Applicants who did not complete the education requirements in Subsection 58-22-302(3)(d) shall document eight years of qualifying experience in land surveying.

(3) Each applicant shall submit a minimum of three verifications of qualifying experience on forms available from the division from licensed professional land surveyors who have provided supervision or who have personal knowledge of the applicant's knowledge, ability and competence to practice professional land surveying.

R156-22-303. Examination Requirements for Licensure as a Professional Land Surveyor.

In accordance with Subsection 58-22-302(3)(g), the examination requirements for licensure as a professional land surveyor are established as the following:

(1) the NCEES Fundamentals of Land Surveying ("FLS") Examination with a passing score as established by the NCEES;

(2) upon completion of the qualifying experience, the NCEES Principles and Practice of Land Surveying ("PPLS") Examination with a passing score as established by the NCEES; and

(3) the Utah Local Practice Examination with a passing score of at least 75.

R156-22-401. 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:

(1) An applicant for licensure as a professional engineer by endorsement shall comply with the examination requirements in Section R156-22-204 except that the board may waive either the FE Examination or the PPE Examination or both for an applicant who was not required to pass the FE Examination or the PPE Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

(2) An applicant for licensure as a professional structural engineer by endorsement shall comply with the examination requirements in Section R156-22-205 except that the board may waive the FE Examination for an applicant who was not required to pass the FE Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

(3) An applicant for licensure as a professional land surveyor by endorsement shall comply with the examination requirements in Section R156-22-303 except that the board may waive either the FLS Examination or the PPLS Examination or both to an applicant who was not required to pass the FLS Examination or the PPLS Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

R156-22-501. Continuing Education for Professional Land Surveyors.

In accordance with Subsections 58-22-303(2) and 58-22-304(1), the qualifying continuing professional education standards for professional land surveyors are established as follows:

(1) During each two year period commencing on January 1 of each even numbered year, a licensed 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 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 land surveying;

(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 land surveying and submitted for publication;

(d) a maximum of six hours per two year period may be recognized for active professional practice of land surveying; and

(e) a maximum of six hours per two year period may be recognized for active membership in any state, national or international organization for the development and improvement of the profession of land surveying.

(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.

R156-22-601. 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), 1990, which is hereby incorporated by reference.

R156-22-701. 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", "Licensed Professional Engineer", "Registered Professional Engineer", "Certified Structural Engineer", "Structural Engineer", "Licensed Professional Structural Engineer", "Professional Structural Engineer", "Land Surveyor", "Professional Land Surveyor", "Licensed Professional Land Surveyor" or "Licensed 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*
September 17, 1996 58-22-101
Notice of Continuation January 27, 1998 58-1-106(1)
58-1-202(1)

R156. Commerce, Occupational and Professional Licensing.
R156-40. Recreational Therapy Practice Act Rules.
R156-40-101. Title.

These rules are known as the "Recreational Therapy Practice Act Rules".

R156-40-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 40, as used in Title 58, Chapters 1 and 40 or these rules:

(1) "Formal university or college coursework" as used in Section R156-40-302a means educational courses taught in a university or college classroom.

(2) "Private practice consultant" as used in Subsection 58-40-6(1)(a) means that a master therapeutic recreational specialist (MTRS) may contract with individuals, groups, agencies or facilities to provide or supervise recreational therapy services.

(3) "Supervise" as used in Subsections 58-40-6(1)(b) and 58-40-6(2)(b) means:

(a) the MTRS or therapeutic recreational specialist (TRS) is responsible for the activities, duties and functions performed by the therapeutic recreational technician (TRT);

(b) the MTRS or TRS shall approve all recreational therapy services performed, prescribed or modified by the TRT as evidenced by their cosignature in the treatment plan; and

(c) the MTRS or TRS is available to the TRT for advice, assistance and direction through direct voice to voice communication and face to face contact.

(4) "Unprofessional conduct" is defined in Title 58, Chapters 1 and 40.

R156-40-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 40.

R156-40-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-40-302a. Qualifications for Licensure - Education Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the education requirements for licensure in Section 58-40-5 are defined, clarified, or established as follows:

(1) To qualify for licensure as a MTRS:

(a) complete a masters degree with an emphasis in recreational therapy which includes nine semester hours or 12 quarter hours in upper division formal university or college coursework in recreational therapy.

(2) To qualify for licensure as a TRS:

(a) be currently certified by the National Council for Therapeutic Recreation Certification at the Therapeutic Recreation Specialist level; or

(b) complete a bachelor's degree which includes the following formal university or college coursework or additional formal university or college coursework:

(i) nine semester hours or 12 quarter hours in recreational therapy which courses are in addition to any course credits that have been awarded for completing an approved 75 hour TRT training program;

(ii) nine semester hours or 12 quarter hours in general recreation which courses are in addition to any credits that have been awarded for completing an approved 75 hour TRT training program;and

(iii) 18 semester hours or 27 quarter hours from at least three of the following subject areas: adaptive physical education, related sciences, human services, psychology, sociology, or special education.

(3) To qualify for licensure as a TRT:

(a) complete an approved 75 hour training program conducted by a MTRS as set forth in Table I; or

TABLE I
75-Hour TRT Training Program

(1) Ethics.
(2) Theories and concepts of recreational therapy.
(3) Characteristics of illness and disability and their effects on leisure.
(4) Medical and psychiatric terminology: psychiatric, pharmacology, abbreviations, recreational therapy and medical.
(5) Client assessment procedures: client, facility, staffing and budget.
(6) Conceptualization and planning of recreational therapy programming.
(7) Records and documentation.
(8) Role and function of other health and human service professionals: agencies, medical specialists, and allied health professionals.
(9) Health and safety: contraindications, aggression, and mechanical aids.

(b) complete four semester hours or six quarter hours in formal university or college coursework in recreational therapy, which hours may also be used toward completing the coursework requirements stated under Subsection R156-40-302a(2)(b)(i) for licensure as a TRS;

(c) complete a course in first aid; and

(d) complete a course in CPR.

R156-40-302b. Qualifications for Licensure - Experience Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the experience requirements for licensure in Section 58-40-5 are defined, clarified, or established as follows:

(1) To qualify for licensure as a MTRS:

(a) complete 4000 hours of paid employment within Utah as a licensed TRS; or

(b) if outside the state of Utah, complete 4000 hours of paid employment in recreational therapy after having completed the education requirements set forth in Subsection R156-40-302a(2) for a TRS.

(2) To qualify for licensure as a TRS, complete a practicum consisting of one of the following:

(a) complete a 360 hour field placement experience over

a minimum of ten weeks in a clinical, residential, or community-based recreational therapy program under the supervision of an on-site supervisor who is licensed as a MTRS or TRS; or

(b) if outside of the state of Utah, complete a 360 hour field placement experience over a minimum of ten weeks in a clinical, residential, or community-based recreational therapy program under the supervision of a person certified by the National Council for Therapeutic Recreation Certification as a Certified Therapeutic Recreation Specialist.

(3) To qualify for licensure as a TRT, complete 125 hours of a fieldwork experience program set forth in Table II in a health care facility, institution, or community-based program under the supervision of a licensed MTRS or TRS.

TABLE II
125-Hour TRT Field Work Experience Program

(1) Face to face consultation with TRS or MTRS supervisor which includes: ethics, client assessment procedures, records and documentation, conceptualization of programming, and theories and concepts of recreational therapy. (10 hours)
(2) Programming (60 hours)
(a) develop and conduct a four sequence recreational therapy activity which is complemented with written action plans identifying treatment goals, precautions, adaptations and general treatment approach;
(b) develop a calendar of recreational therapy activities for one month which is reflective of client populations' interests and needs; and
(c) plan and conduct routinely scheduled recreational therapy activities.
(3) Documentation (40 hours)
(a) complete 10 assessments and formulate ten treatment plans; and
(b) collect data during treatment implementation on ten clients or patients and formulate respective status notes.
(4) Interdisciplinary contact (10 hours)
Attendance at interdisciplinary team meetings to increase familiarity with function of area professional practice: social work, nursing, psychology, dietary, physical therapy, occupational therapy and others.
(5) Administration (5 hours)
(a) receive orientation on quality assurance;
(b) attend at least one management meeting; and
(c) meet with the department administrator to discuss administrative expectations of the TRT.

R156-40-302c. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsections 58-1-203(2) and 58-1-301(3) and Sections 58-1-309 and 58-40-5, the examination requirements for licensure are defined, clarified, or established as follows:

(a) pass the Utah Recreational Therapy Theory Examination for the license classification the applicant is applying for; and

(b) pass the Utah Law and Rules Examination.

(2) Individuals who are currently enrolled in an approved bachelors or masters curriculum may begin testing for the TRS or MTRS theory and law and rules examinations in their last semester or quarter prior to graduation.

(3) Individuals who have completed the education requirements for licensure as a TRT may begin testing for the TRT theory and law and rules examinations.

R156-40-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 40 is established by rule in Section R156-1-308.

(2) Renewal procedures shall be in accordance with Section R156-1-308.

KEY: licensing, recreational therapy*
1994 58-40-1
Notice of Continuation January 27, 1998 58-1-106(1)
58-1-202(1)

R156. Commerce, Occupational and Professional Licensing.
R156-59. Employee Leasing Company Act Rules.
R156-59-101. Short Title.

These rules are known as the "Employee Leasing Company Act Rules".

R156-59-101a. Authority.

These rules are adopted in accordance with the authority vested in the division under Subsection 58-1-106(1), and in accordance with provisions of Title 63, Chapter 46a, the Utah Administrative Rulemaking Act.

R156-59-102. Definitions.

In addition to the definitions in Sections 58-1-102 and 58-59-102, as used in these rules:

(1) "Commencing or reentering business" as used in Subsection 58-59-302(6) means that a person currently registered in good standing with the Division of Corporations and Commercial Code as an employee leasing company as of December 31, 1992 or during the period January 1, 1993 through June 30, 1993, shall be deemed to be a continuing business and is not subject to the $50,000 minimum net worth required in that subsection.

(2) "Current financial statements" means a statement of financial position (balance sheet), and a statement of earnings (income or profit and loss statement) including the schedules and notes that pertain thereto for a period of time ending no earlier than the last tax year end of the entity for which the statements are submitted. Statements are to be prepared in accordance with generally accepted accounting principles and presented in a format and in such detail as prescribed by the division.

(3) "Unprofessional conduct" means:

(a) engaging in business as an employee leasing company with a leased employee or client company for which there is not in place a signed contract in form and substance as required by the division under R156-59-304; or

(b) using one's position as a member of the Employee Leasing Company Licensing Board in any advertisement or representation related to that individual engaging in business as or for an employee leasing company or client company, or in any other way intend to use that position for influence for other than legitimate business of the board.

R156-59-302. Application for Licensure.

(1) An application for license shall be accompanied by the following documents:

(a) Certificates of Registration or other satisfactory evidence of current appropriate registration with the:

(i) Division of Corporations and Commercial Code;

(ii) Department of Employment Security;

(iii) Utah State Tax Commission; and

(iv) Internal Revenue Service; and

(b) Certification that the applicant will maintain at the business offices of the applicant evidence of current worker's compensation insurance covering every employee leased by the applicant to a client company if licensure is granted, and that such evidence of insurance shall be available for inspection by a representative of the division during normal business hours.

(c) the form of each and every contract between the employee leasing company and a client company which is used or will be used by the applicant employee leasing company;

(d) the form of each and every contract between the employee leasing company and each employee of that leasing company who is to be leased to a client company; and

(e) financial statements as required under these rules and Title 58, Chapter 59, the Employee Leasing Company Act.

R156-59-303. Financial Responsibility.

(1) Financial responsibility shall be determined by the totality of history and circumstances relating to an applicant for licensure as an employee leasing company or to a licensed employee leasing company; however, the primary evidence which shall be used by the division is the financial statements of the applicant or licensee.

(2) An applicant or licensee shall provide the division with:

(a) current financial statements of the applicant or licensed employee leasing company in substance as prescribed by the division; and

(b) current financial statements audited by a certified public accountant relating to any self-funded or partially self-funded insurance plans maintained by the applicant or licensed employee leasing company for the benefit of employees of the applicant leased to client companies.

(3) An applicant or licensee may provide the division with, or the division may consider on its own:

(a) other evidence regarding the financial responsibility of an applicant or licensee including:

(i) operating history as an employee leasing company;

(ii) current and past financial condition and operating results;

(iii) history of debt or payable payment practices;

(iv) capitalization of applicant or licensee;

(v) form of organization and limits on the liability of owners, officers, and managers;

(vi) guarantees of the obligations of the applicant or licensee by other persons;

(vii) credit reports; and

(viii) history of judgements, liens, or other action of a similar nature.

(4) The division shall review financial information submitted by an applicant or licensee against an objective model representative of the industry in making its determination of financial responsibility; however, the results of that comparison shall be advisory only and shall not be the sole criteria used by the division in making a determination whether financial responsibility is demonstrated.

(5) If the division determines that financial responsibility has not been demonstrated, the division shall advise the applicant or licensee of its finding and the applicant or licensee may submit whatever additional information it may believe will assist the division in making a finding of financial responsibility.

(6) In accordance with the following schedule, each licensed employee leasing company shall file with the division a report in form as prescribed by the division, certified by an independent certified public accountant, and an owner, partner, officer, or responsible managing employee of the licensee, certifying to the fact that all federal, state, and local withholding taxes, unemployment taxes, FICA taxes, worker's compensation premiums, and employee benefit plan obligations have been paid:

TABLE

Quarter Ends	Report Due
March 31st	Following June 30th
June 30th	Following September 30th
September 30th	Following December 31st
December 31st	Following March 31st

(7) Failure of an employee leasing company to submit reports as required by statute or these rules, or upon a finding by the director of reasonable cause to believe the financial responsibility of an employee leasing company is impaired to the extent it poses a threat to the public interest and the employee leasing company fails to submit information requested by issuance of a subpoena duces tecum as is reasonable and necessary to demonstrate financial responsibility, shall be grounds for the division to take appropriate action in accordance with the provisions of Title 63, Chapter 46b, to immediately suspend the license of an employee leasing company.

R156-59-304. Contracts.

(1) Each contract in place between an employee leasing company and a client company, and between an employee leasing company and a leased employee shall conform to the following standards:

(a) Contract Between Employee Leasing Company and Employee to be Leased: A contract between an employee leasing company and that company's employee to be lease to a client company shall contain at a minimum the following:

(i) complete identification with respect to the employee leasing company to include name of the company as filed with the Division of Corporations and Commercial Code and the name under which the company does business, the company's street address and telephone number, and the name of the responsible management person of the company who shall be the employee's contact with the employee leasing company;

(ii) disclosure in clearly understandable terms that the employee is under contract for the purpose of being leased to a client company acceptable to the employee and under employment terms and conditions acceptable to the employee;

(iii) disclosure of the identity of the entity from whom the employee will receive compensation for work performed;

(iv) disclosure of the total compensation, including all employee benefits, to which the employee will be entitled;

(v) an affirmative representation by the employee leasing company that it will pay or cause to be paid when due all amounts to which the employee is entitled or which are to be paid to others, including government agencies and insurance companies, as a result of the employee's employment; and

(vi) addenda to the contract as necessary to document modification of any conditions of employment of the employee including the client company to whom the employee is leased, change in compensation including employee benefits, change in terms and conditions of employment, or any other matter which is material in the employment of the employee by the employee leasing company or in the leasing of the employee to a client company.

(b) Contract Between Employee Leasing Company and Client Company Leasing Employees: A contract between an employee leasing company and a client company to who leased employees are provided shall contain at a minimum the following:

(i) complete identification with respect to the employee leasing company to include name of the company as filed with the Division of Corporations and Commercial Code and the name under which the company does business, the company's street address and telephone number, and the name of the responsible management person of the company who shall be the client company's contact with the employee leasing company; and

(ii) complete identification with respect to the client company to include name of the company as filed with the Division of Corporations and Commercial Code and the name under which the company does business, the company's street address and telephone number, and the name of the responsible management person of the company who shall be the employee leasing company's contact with the client company; employee leasing company;

(2) With respect to each contract, the employee leasing company shall file a form of the contract with the division accompanied by a letter from legal counsel for the employee leasing company expressing a legal opinion that the contract form fully complies with the contract standards set forth in this section.

(3) A contract form shall not be used by an employee leasing company until the contract form has been reviewed by legal counsel for the employee leasing company, found to be is in compliance with the contract standards, and is filed with the division with the required opinion letter from counsel.

R156-59-306. Expiration of License - Renewal Requirements.

(1) Each applicant for renewal of an employee leasing company license shall demonstrate continuing qualification for licensure by submission of:

(a) current financial statements of the employee leasing company in substance as required on forms as prescribed by the division; and

(b) current financial statements of any self-funded or partially self-funded insurance plan in substance as required on forms as prescribed by the division.

KEY: licensing, employee leasing company*

1993	**58-1-106(1)**
Notice of Continuation January 27, 1998	**58-1-202(1)**
	58-59-101

R156. Commerce, Occupational and Professional Licensing.
R156-60d. Substance Abuse Counselor Act Rules.
R156-60d-101. Title.

These rules are known as the "Substance Abuse Counselor Act Rules."

R156-60d-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60 or these rules:

(1) "Formal classroom education" as used in Subsection R156-60d-302a(4), includes workshops, seminars, institutes, and college/university work.

(2) "ICRC/AODA, Inc." means the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse, Inc.

(3) "NAADAC" means the National Association of Alcohol and Drug Abuse Counselors.

(4) "Qualified continuing education" means continuing education that meets the standards set forth in Section R156-60d-304.

(5) "Unprofessional conduct," as defined in Title 58 Chapters 1 and 60, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-60d-502.

R156-60d-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 60, Part 5.

R156-60d-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.

R156-60d-302a. Qualifications for Licensure - Education Requirements.

In accordance with Sections 58-60-505 and 58-60-506, the standards for the education requirements are established as follows:

(1) The institution of higher education set forth in Subsections 58-60-505(1)(d)(i) and 58-60-506(1)(d)(i) shall be accredited by a regional institutional accrediting body identified in the "Accredited Institutions of Postsecondary Education", 1996-97 edition, published for the Commission of Recognition of Postsecondary Accreditation of the American Council on Education.

(2) The substance abuse counselor program set forth in Subsections 58-60-505(1)(d)(i)(A) and 58-60-506(1)(d)(i)(A) shall include:

(a) a major in alcohol and other drug abuse counseling; and

(b) a minimum of 300 clock hours of supervised field work practicum.

(3) Any baccalaureate or graduate degree in a behavior

science field will satisfy the educational requirement set forth in Subsections 58-60-505(1)(d)(i)(B) and 58-60-506(1)(d)(i)(B).

(4) The 300 hours of addiction counseling specific training set forth in Subsection 58-60-506(1)(d)(ii)(B) is defined as formal classroom education emphasizing alcohol and other drug addictions related to the practice of substance abuse counseling consisting of:

(a) a minimum of 18 hours in professional ethics and responsibilities; and

(b) a minimum of ten clock hours of training in each of the areas of practice as defined in Subsection 58-60-502(6)(a).

R156-60d-302b. Qualifications for Licensure - Experience Requirements.

(1) In accordance with Subsections 58-60-505(1)(d)(i)(B) and 506(1)(d)(i)(B), the 4,000 hours of supervised qualifying experience shall:

(a) be 4,000 clock hours of experience providing substance abuse counseling services as defined in Subsection 58-60-502(6);

(b) consist of a minimum of 300 clock hours of addiction counseling specific training in a formal classroom education setting, emphasizing alcohol and other drug addictions related to the practice of substance abuse counseling, completed at the beginning of the supervised experience period; and include:

(i) a minimum of 18 hours in professional ethics and responsibilities; and

(ii) a minimum of ten clock hours of training in each of the areas of practice as defined in Subsection 58-60-502(6)(a);

(c) be completed in an approved agency as defined in Subsection 58-60-502(1);

(d) be supervised at a ratio of one hour of face-to-face direct supervision for every 20 hours of substance abuse counseling services provided by a supervisor who shall:

(i) be licensed as either a substance abuse counselor or a mental health therapist;

(ii) possess a certified clinical supervisor (CCS) credential, or have completed a minimum of 10,000 hours of experience in substance abuse, or if the supervised experience is completed on or after July 1, 2000, then the supervisor must possess a CCS credential or have completed at least 4,000 hours of licensed experience providing substance abuse counseling services; and

(e) be completed only when a licensed substance abuse counselor or mental health therapist is at the site where the supervised experience is occurring.

(2) In accordance with Subsection 58-60-506(1)(d)(ii)(C), the supervised experience shall:

(a) be 6,000 clock hours of experience providing substance abuse counseling services as defined in Subsection 58-60-502(6);

(b) be completed in an approved agency as defined in Subsection 58-60-502(1);

(c) be supervised at a ratio of one hour of face-to-face direct supervision for every 20 hours of substance abuse counseling services provided by a supervisor who shall:

(i) be licensed as either a substance abuse counselor or a mental health therapist;

(ii) possess a certified clinical supervisor (CCS) credential, or have completed a minimum of 10,000 hours of experience in substance abuse, or if the supervised experience is completed on or after July 1, 2000, then the supervisor must possess a CCS credential or have completed at least 4,000 hours of licensed experience providing substance abuse counseling services;

(d) be completed only when a licensed substance abuse counselor or mental health therapist is at the site where the supervised experience is occurring; and

(e) include a 300 clock hour supervised practicum experience which focuses on skill development and integration of knowledge and shall:

(i) be completed in an approved agency as defined in Subsection 58-60-502(1);

(ii) be supervised at a ratio of one hour of face-to-face direct supervision for every ten hours of substance abuse counseling services provided by a supervisor who shall:

(A) be licensed as either a substance abuse counselor or a mental health therapist;

(B) possess a certified clinical supervisor (CCS) credential, or have completed a minimum of 10,000 hours of experience in substance abuse, or if the supervised experience is completed on or after July 1, 2000, then the supervisor must possess a CCS credential or have completed at least 4,000 hours of licensed experience providing substance abuse counseling services;

(iii) consist of a minimum of ten clock hours of experience in each of the area of practice as defined in Subsection 58-60-502(6)(a); and

(iv) be completed only when a licensed substance abuse counselor or mental health therapist is at the site where the supervised experience is occurring.

R156-60d-302c. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-60-505(1)(e) and 58-60-506(1)(e), the examinations required for licensure are the following:

(1) the written International Certification Examination for Alcohol and Drug Counselors of the ICRC/AODA, Inc., with a minimum criterion score as set by ICRC/AODA, Inc; or

(2) current certification by the ICRC/AODA, Inc. as an international certified alcohol and drug counselor (ICADC), if applying for licensure prior to July 1, 1998.

R156-60d-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 60, Part 5 is established by rule in Section R156-1-308.

(2) Renewal procedures shall be in accordance with Section R156-1-308.

R156-60d-304. Continuing Education.

(1) In accordance with Section 58-60-105, there is created a continuing education requirement as a condition for renewal or reinstatement of licenses issued under Title 58, Chapter 60, Part 5.

(2) Continuing education shall consist of 40 hours of qualified continuing professional education directly related to the licensee's professional practice in each preceding two year

period of licensure or expiration of licensure. At least six of the 40 required hours, must be in the area of professional ethics and responsibilities.

(3) 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.

(4) The standards for qualified continuing professional education shall include:

(a) a clear statement of purpose and defined objective for the educational program directly related to the practice of a substance abuse counselor;

(b) documented relevance to the licensee's professional practice;

(c) a competent, well-organized, and sequential presentation consistent with the stated purpose and objective of the program;

(d) preparation and presentation by individuals who are qualified by education, training, and experience; and

(e) a competent method of registration of individuals who actually completed the professional education program and records of that registration completion available for review.

(5) Credit for professional education shall be recognized in accordance with the following:

(a) unlimited hours shall be recognized for professional education completed in blocks of time of not less than 50 minutes in formally established classroom courses, seminars, conferences, workshops, institutes, or in services;

(b) a maximum of ten hours per two year period may be recognized for teaching in a college or university, or teaching qualified continuing professional education courses in the field of substance abuse; and

(c) a maximum of six hours per two year period may be recognized for clinical readings directly related to practice as a substance abuse counselor.

(6) A licensee shall be responsible for maintaining competent records of completed qualified professional education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to qualified professional education to demonstrate it meets the requirements under this section.

(7) A licensee who documents he is engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing professional education requirements established under this section may be excused from the requirement for a period of up to five years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

R156-60d-307. License Reinstatement - Requirements.

In accordance with Subsection R156-1-308e(3)(b), an applicant for reinstatement of a license after two years following expiration of that license shall demonstrate competency by:

(1) meeting with the board upon request for the purpose of evaluating the applicant's current ability to engage safely and competently in practice as a substance abuse counselor and to make a determination of any additional education, experience or examination requirements which will be required before reinstatement;

(2) passing the written International Certification Examination for Alcohol and Drug Counselors of the ICRC/AODA, Inc. if it is determined by the board that current taking and passing of the examination is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a substance abuse counselor; and

(3) completing at least 40 hours of professional education in subjects determined by the board as necessary to ensure the applicant's ability to engage safely and competently in practice as a substance abuse counselor.

R156-60d-502. Unprofessional Conduct.

"Unprofessional conduct" includes any violation of any provision of the "Ethical Standards of Alcoholism and Drug Abuse Counselors" established by the NAADAC, May 20, 1995 edition, which is hereby incorporated by reference.

KEY: licensing, substance abuse counselors*
January 15, 1998 **58-60-501**
58-1-106(1)
58-1-202(1)

R202. Community and Economic Development, Community Development, Community Services.

R202-100. Community Services Block Grant Rules.

R202-100-1. Authority.

This rule is authorized under Section 9-4-202, U.C.A. 1953, which allows the Department of Community and Economic Development (DCED) to receive funds for and to administer federal aid programs.

R202-100-2. Purpose.

The purpose of this rule is to establish standards and procedures for the Community Services Block Grant (CSBG) authorized under the Omnibus Reconciliation Act of 1981 (Title XVII, Chapter 2, Sections 671 through 683), contracted to eligible entities (counties or combinations of counties and Community Action Programs) to provide a range of services and activities having a measurable and potentially major impact on causes of poverty in the local communities.

R202-100-3. Eligible Grantees for CSBG Programs and Projects.

A. Utah shall distribute at least 90 percent of available funds as pass-through grants to eligible entities (hereinafter referred to as local grantees) for them to administer directly or, at their option, to sub-contract (hereinafter referred to as local sub-grantees) for the performance of eligible activities. Eligibility for the 5 percent discretionary funds will be established by the state plan each fiscal year.

B. Whenever a public grantee chooses to sub-contract all program operations to a private entity rather than administer them directly, the private entity must be a non-profit organization directed by a board whose composition complies with Section 675 (c)(3) of the Community Services Block Grant Act.

R202-100-4. Assurances Required by CSBG Act.

All grantees shall be required to submit a certification of assurances based on CSBG programmatic, administrative and financial requirements of the Act as outlined by Community Services Block Grant Program Directives prepared by the State Community Services Office (SCSO).

R202-100-5. Compliance.

Local grantees must maintain their eligibility to receive CSBG funds by being in compliance with applicable laws, regulations, and contractual agreements. The state reserves the right to examine all aspects of CSBG funded activities to ensure that this is the case.

R202-100-6. Qualifications.

Local grantees must demonstrate that they have in place, or shall have in place prior to undertaking CSBG funded program activities, management systems adequate to ensure that CSBG funds shall be spent efficiently and effectively. When activities are sub-contracted, the local grantee must have in place a system and assume the responsibility for monitoring and evaluating sub-contracts. Files must be retained containing such monitoring and evaluation results. In no case shall the state provide funds to a grantee if available evidence suggests that the grantee cannot fulfill its obligations under the terms of the assurances required by the CSBG Act and the state plan for the use of CSBG funds.

R202-100-7. Program Participant Eligibility.

Income eligibility for program participation shall be based on the Office of Management and Budget official poverty guidelines as described in Section 673 of the CSBG Act.

R202-100-8. Funds Allocation.

A. CSBG funds shall be allocated on the basis of federal fiscal years beginning October 1 to local agencies by the following formula:

(1) All agencies selected for funding shall be awarded an equal, minimum base amount.

(2) The amount remaining after subtraction of the sum of the minimum base amount shall be allocated among the local grantees based on the census counts (or updates) of low-income residents and other related criteria such as long-term unemployment.

R202-100-9. Approval Process.

Criteria shall be used to review applications for CSBG funds and shall be distributed to eligible grantees as a SCSO Community Services Block Grant Program Directives. A panel will screen and give a numerical rating to every application submitted by an eligible grantee based on the criteria outlined. The Community Services Office will compile these ratings and will make a final determination as to proposals that will receive funding and as to the level of funding that will be provided. Proposals must score a minimum number of points to be considered eligible. Prospective CSBG grantees shall be notified of application status 60 days or less after the closing date of application submissions. Any application found to be incomplete or inadequate will be returned to the local grantee for appropriate changes. The Community Services Office will provide technical assistance to any eligible agency scoring below the minimum.

R202-100-10. Award Procedures.

The state shall enter into a contract with local grantees October 1 contingent upon Federal authorization and appropriation for CSBG. Once signed, this contract shall be binding on both parties.

R202-100-11. Fiscal Operations Procedures.

A. Each local grantee shall have an acceptable procedure describing functions of its fiscal office and including at a minimum:

(1) Purchasing procedure

(2) System of cash control

(3) Payroll system

(4) Internal and external reporting systems

B. Fiscal procedures shall be in compliance with applicable state and federal regulations and conform with generally accepted accounting procedures.

R202-100-12. Financial Reports and Reimbursements.

Financial reports (Form CSBG 611-D) are to be submitted

on a monthly basis, no later than twenty (20) days following the end of each month. Local grantees shall receive reimbursement based on a monthly financial status report and certification of work program activities. All reports must have an authorized signature, i.e., the contract signatory or someone designated by the signatory, with a letter of designation filed with the state.

R202-100-13. Administrative Cost.

Administrative costs include allowable expenditures incurred to administer the CSBG through an indirect cost plan, approved by a cognizant Federal Agency or a cost allocation plan approved by the SCSO. Such costs should not exceed 10%.

R202-100-14. Travel and Per Diem.

Travel, per diem and allowances for staff and board members shall be determined by approved local agency guidelines which establish rates of reimbursement.

R202-100-15. Purchasing, Receiving and Accounts Payable.

A. Grantee agencies shall develop and have approved procedures for handling purchasing, receiving, and accounts payable. (In the absence of a local procedure, the state procedure shall be followed.) These procedures should include:

(1) Pre-numbered purchase orders and/or vouchers for all items of cost and expense.

(2) Procedures to insure procurement at competitive prices.

(3) Receiving reports to control the receipt of merchandise.

(4) Effective review following prescribed procedures for program coding, pricing and extending vendors' invoices.

(5) Invoices matched with purchase orders and receiving reports.

(6) The local grantee must have adequate controls, such as checklists for statement - closing procedures to insure that open invoices and uninvolved amounts for goods and services are properly accrued or recorded in the books or controlled through worksheet entries.

(7) Adequate segregation of duties in that different individuals are responsible for:

(a) Purchase;

(b) Receipt of merchandise or services; and

(c) Voucher approval

B. A list of anticipated equipment purchases must accompany the application for funding. Purchases over $1,000 must receive written state approval.

R202-100-16. Property and Equipment.

A. Each local grantee shall develop procedures for control of property and equipment. These procedures should include; but are not limited to:

(1) An effective system of authorization and approval of equipment purchase;

(2) Accounting practices for recording assets;

(3) Detailed records of individual assets which are maintained and periodically balanced with the general ledger accounts;

(4) Effective procedures for authorizing and accounting for equipment disposal; and

(5) Secure storage of property and equipment.

R202-100-17. Purchase or Improvement of Land or Buildings.

Funds shall not be used for purchase or improvement of land, or the purchase, construction, or permanent improvement (other than low-cost residential weatherization or other energy related home repairs) of any building or other facility except as this prohibition may be waived under conditions described in Section 680 (b) of the CSBG act.

R202-100-18. Personnel Policies.

A. Each local grantee shall maintain written personnel policies, available for review, which should include:

(1) Classification and pay plan;

(2) Policies governing selection and appointment;

(3) Conditions of employment and employee performance;

(4) Employee benefits;

(5) Employee-management relations including procedures for filing and handling grievances, complaints and rights of appeal;

(6) Personnel records and payroll procedures;

(7) Job description for all positions;

(8) Drug Free Work Place Policy.

R202-100-19. Civil Rights.

A. All CSBG funded programs shall comply with the nondiscrimination provisions contained in Section 677 of the Community Services Act.

B. Local grantees shall be required to have on file an affirmative action plan that describes what they will do to ensure that current and prospective employees and program participants are treated in a non-discriminatory manner. This plan shall also include a grievance procedure to deal with allegations of discrimination on the part of prospective and current staff members or program participants.

C. The provisions of this section shall apply to any and all grantees and sub-grantees, except where special conditions apply, i.e., Indians, migrants, or seasonal farm workers.

R202-100-20. Prohibition of Political Activities.

Each CSBG grantee shall be responsible for assuring adherence to political activity prohibitions contained in Sec. 675 (c) (7) of the CSBG Act. Monitoring of sub-grantees shall be required as a part of administrative responsibilities. A description of this process is to be available for state review during monitoring visits or upon request. Violations of the prohibitions are to be reported to the state CSO immediately along with reports of measures taken by the grantee to restore compliance.

R202-100-21. Audits and Inspection.

Each local grantee shall have performed by an independent certified public accounting firm an annual audit that conforms with the provisions and requirements of OMB Circular A-128, A-122 and A-133. The audit shall be due no later than one year following the end of the grantee's fiscal year.

R202-100-22. Suspension or Termination of Funds.

A. DCED may suspend funding to a local grantee if monitoring reports or independent audit reports indicate

continuing, substantial non-compliance with contract requirements, accounting procedures, or fiscal control requirements. If problems identified are not corrected within a reasonable length of time, but not to exceed 60 days, DCED may terminate its contract with local grantee and make the remaining funds available to other eligible entities. Action to suspend or terminate funding will not be taken, however, unless timely and reasonable communication with the local grantee fails to produce corrective action to DCED's satisfaction. The local grantee shall not be relieved of liability to the state for funds expended for improper purpose or federal audit exceptions sustained by the state by virtue of any breach of the contract by the agency, and the state may withhold or recover any payments to the grantee for the purpose of setoff until such time as the exact amount of damage due the state from the grantee is determined.

B. Pursuant to the provisions of the contract between the state and local grantee, delegation of funds and activities to others may not be made without prior approval of DCED, SCSO.

R202-100-23. Transfer of Funds.

Because of the limited funds anticipated to be made available, DCED shall not transfer any of the CSBG to eligible entities under the Older Americans Act of 1965, Head Start, or Low-income Home Energy Assistance, nor consider a grantee in compliance if such transfers are made locally.

R202-100-24. Amendments/Waivers.

A. Prior approval for budget changes is required in the following instances:

(1) The dollar amount of transfers among budget categories exceeds or is expected to exceed $10,000 or five percent of the grant budget, whichever is greater, for grants of $100,000 or larger.

(2) For grants under $100,000, approval is required if transfers exceed or are expected to exceed five percent of the grant budget.

(3) Limited flexibility in budget adjustments will be allowed as follows (submit informational copies of adjusted CSBG forms to SCSO):

(a) Rebudgeted funds within the Personnel Services portion of their CSBG budget;

(b) Rebudgeted funds within the Supportive Services portion of their CSBG budget;

(c) On a one-time basis, allowable transfers from the Personnel Services budget to Supportive Services;

(d) On a one-time basis, allowable transfers from the Supportive Services budget to Personnel Services;

B. Program goals may be amended by submitting changes for approval on appropriate CSBG forms. At any point during the program year it appears that a goal may be achieved at less than 90%, a program and budget amendment must be submitted for approval.

C. Grantees may also request contract period end dates be extended for up to sixty (60) days in order to spend program or project carryover funds amounting to less than ten (10) percent, or an amount approved by the state, of the total contract amount.

R202-100-25. Project Monitoring and Evaluations.

A. Monitoring will be accomplished through review of the fiscal and progress reports and on-site. On-site visits shall automatically be initiated in response to a written complaint of financial or programmatic non-compliance.

B. Evaluation of CSBG funded programs shall be conducted either by the state or by the local CSBG grantees and shall be distinct from both compliance monitoring and the state's examination of CSBG grantees to ensure that they are eligible to receive CSBG funds and that they are in compliance with all CSBG related obligations. Monitoring will relate to grantee compliance with federal assurances and state requirements in program management and operation. Evaluation will involve an attempt to measure program performance project results, and to determine the impact a grantee's efforts have had on the causes of a problem being addressed and on the problem itself.

C. For the most part, CSBG evaluations will be a joint state/local effort, but the state does reserve the right to conduct evaluations of CSBG programs at any time for purposes it deems appropriate. In such cases, reasonable efforts will be made to accommodate the concerns of any local grantee that is involved.

R202-100-26. Program Reporting Requirements.

Local grantees shall be required to maintain client profile sheets on individual clients, households or groups of clients, if appropriate. A compiled report of the number and characteristics of clients served, by category, shall be submitted to SCSO on the prescribed CSBG Form thirty (30) days after the end of each quarter of the program period. The program progress report is also due at the same time.

R202-100-27. Appeals Procedure.

A. Grantees identified in the state plan as eligible to receive funding from the Community Services Block Grant can use the following procedure to appeal decisions made by the State Community Services Office in regards to program and funding.

B. Any substantive decision of SCSO which a local grantee believes to be unfair or unreasonable and having a major adverse impact on the local program, may be appealed by the grantee. The appeal process is as follows:

(1) Within fifteen (15) days of receipt of a SCSO decision that is believed to be unfair or unreasonable, the grantee believing itself to be aggrieved must submit a letter to the executive director of DCED, approved and signed by its elected officials, setting forth:

(a) The decision that is being questioned;

(b) The date on which the grantee received notice of the decision;

(c) The rationale of the grantee for considering the decision to be substantial and unfair or unreasonable to the grantee;

(d) A request for a hearing, including a statement as to the desired outcome of such a hearing.

(2) Within ten (10) working days of the receipt of the grantee's request for a hearing, the executive director shall name a hearing officer, who shall schedule a hearing date no later than two (2) weeks after being so named and will notify the appellant grantee. The hearing officer will be independent of DCED.

(3) Prior to the scheduled hearing, the SCSO staff shall

contact the Board of Directors of the appellant grantee:

(a) To obtain additional information pertinent to the issue;

(b) To clarify any misunderstanding of fact or policy;

(c) To explore possible alternatives that would eliminate the necessity for a hearing;

(d) To obtain a written withdrawal of the request for a hearing if the issue is resolved through negotiation.

(4) The hearing, should there be one, shall be conducted by the hearing officer. The appellant grantee may be represented by whomever it chooses at the hearing, but must notify DCED at least five (5) working days prior to the hearing who that person will be.

(5) The hearing officer shall review all testimony and evidence presented at the hearing and recommend a decision to the DCED Executive Director. The DCED Executive Director shall issue a written decision on the appeal within 10 working days after receipt of the hearing officer's recommendations.

(6) The decision resulting from the hearing shall be final. Any necessary hearings shall be held in Salt Lake City or at a site more convenient to the appellant agency, at the discretion of the Executive Director of DCED.

R202-100-28. Citizen Participation.

A. The state requires citizen participation and supports maximum participation of all interested persons and groups in the development and implementation of the CSBG programs at the state and local level, in advisory or administering capacity.

1. Tripartite boards are required for governing boards of private, non-profit organizations and for the administering/advisory boards of public agencies and shall conform to the requirements outlined in Sec. 675 (c) (3).

a. A minimum of one third of the board is to represent low income. A description of the democratic selection process for representatives of the poor is to be available for review.

b. One third of the members of the board are to be elected public officials, currently holding office, or their representatives, except if not enough public officials are willing or available, appointed public officials may serve. Minutes of meetings or letters of appointment must be on file for review.

c. The remainder of the members are to be officials or members of business, industry, labor, religious, welfare, education or other major groups in the community. A description of the process used for selection of private sector representatives is to be available for review. The description should include a process for interested private sector groups to petition for membership and how the petition will be considered.

B. As a part of the problem assessment portion of the planning phase (conducted every three years), each local agency shall conduct public forums for low-income residents of the areas. These forums are to allow a discussion and listing of problems as viewed by the low-income and their suggestions for solutions.

R202-100-29. Federal Program Regulations.

The CSBG is subject to regulations periodically published in the Federal Register.

R202-100-30. Required Documentation and Forms.

The required application, budget and reporting forms shall be designated through SCSO Community Services Block Grant Program Directives.

R202-100-31. Application Process and Submission Timetable.

A. The grant application phase of CSBG for local grantees involves:

(1) A local poverty problem identification process developed under prescribed criteria outlined in a Community Services Block Grant Program Directives, problem analysis, resource analysis, service delivery system description, prioritization process and coordination policy process with appropriate documentation submitted to SCSO by May 15 every three (3) years, starting in 1998;

(2) The development of a work program for addressing problems identified and prioritized includes;

(a) Community review of draft work program;

(b) Approval of final plan by local boards or by local officials;

(c) Submission to state office by June 30 of each year.

(3) As part of the application package, the applicant must submit an administrative budget separate from the program operation budget.

R202-100-32. Budget Estimate.

By May 1, the state shall make available to eligible applicants, an estimate of funding amounts for each geographical area, based on the formula contained in the State Plan.

R202-100-33. Public Review and Comment.

A. After the work program has been prepared, but before Board approval, the applicant must provide ample opportunity for its' review by low-income residents, the community as a whole, and relevant community organizations and agencies. Notice of the availability of the application for citizen review and comment shall also be given by providing written notice to organizations and agencies, to the local media, and posting of notice in public places convenient to low-income residents. The grantee must submit all of the comments of persons and organizations choosing to respond with the application to the State Office of Community Services.

R202-100-34. Senate Bill 50 - Sales Tax Refund on Donated Food.

A. The State Community Services Office shall:

(1) Provide definitions for certification and de-certification of eligible agencies to receive the sales tax refund;

(2) Provide criteria for an organization to apply for recognition as a qualified emergency food agency;

(3) Provide procedures to be used in the certifying and de-certifying of agencies for Rules and Procedure infractions;

(4) Provide standards for determining and verifying the amount of the donated food;

(5) Certify organizations to receive the Sales Tax Refund to the State Tax Commission;

(6) Provide monitoring to insure certified agencies maintain required weighing capabilities and inventory records;

(7) Develop other procedures necessary to implement Senate Bill 50 in consultation with the State Tax Commission.

KEY: antipoverty programs, grants, community action programs*, food sales tax refunds*
January 15, 1998 9-4-202
Notice of Continuation December 8, 1997

R251. Corrections, Administration.
R251-107. Executions.
R251-107-1. Authority and Purpose.

(1) This rule is authorized by Section 77-19-10,11, in which the Department shall adopt and enforce rules governing procedures for the execution of judgments of death and attendance of persons at the execution.

(2) The purpose of this rule is to address public safety and security within prison facilities prior to, during and immediately following an execution.

R251-107-2. Definitions.

(1) "broadcast news media" means reference to a radio and television news media.

(2) "Department" means Utah Department of Corrections.

(3) "news magazines" means magazines having a general circulation being distributed or sold to the general public by newsstands, by mail circulation, or both.

(4) "news media" includes persons engaged in news gathering for newspapers, news magazines, radio, television or other news services.

(5) "news media members" means persons over the age of eighteen who are primarily employed in the business of gathering or reporting news for newspapers, news magazines, national or international news services, radio or television stations licensed by the Federal Communications Commission or other recognized news services.

(6) "newspaper" means a publication that circulates among the general public, and contains information of general interest to the public regarding political, commercial, religious or social affairs.

(7) "press" means the print media, news media, or both.

(8) "Timpanogos Facility" means the inmate housing unit at North Point formerly called the Young Adult Correctional Facility.

(9) "USP" means Utah State Prison.

R251-107-3. Crowd Control.

(1) Persons arriving at or driving past the USP shall be routed and controlled in a manner which does not compromise or inhibit:

(a) security;

(b) official escort or movement;

(c) the functions necessary to carry out the execution; or

(d) safety.

(2) Persons controlled/handled through this process shall:

(a) be handled in a manner with no more restriction than is necessary to carry out the legitimate interests of the Department; and

(b) be dealt with in a courteous manner.

(3) Procedures for crowd control shall be consistent with federal, state and local laws.

(4) Only persons specifically authorized by security list or Department identification shall be permitted on USP property, except those persons congregating at the designated demonstration/public area.

(5) Persons entering USP property without authorization shall be ordered to leave and may be arrested if:

(a) the trespass was intentional;

(b) the individual failed to immediately leave the USP property following a warning;

(c) the trespass jeopardized safety or security (or) interfered with the lawful business of the Department or its staff or agents; or

(d) it involves entry onto areas clearly posted with signs prohibiting access or trespass.

R251-107-4. Selection of Executioners.

(1) The Executive Director/designee shall ensure that the method of judgment of death specified in the warrant is carried out at a secure correctional facility operated by the Department in accordance with Section 77-19-10.

(2) If the judgment of death is to be carried out by lethal injection, at least four persons, including two alternates who are trained to administer intravenous injections, shall be selected.

(a) Two shall be selected to administer a continuous intravenous injection; one of which shall be a lethal quantity of sodium thiopental or other equally or more effective substance sufficient to cause death.

(b) Two additional executioners who shall be alternates, shall be selected to provide back-up for the primary team.

(c) The Executive Director, and Warden shall be responsible for selecting the executioners.

(i) Executioners may be selected from within or outside of the state of Utah.

(ii) Selection to the teams shall require knowledge and training in the accepted medical practices to administer intravenous injections.

(d) The Warden and Executive Director shall review the qualifications and other relevant information concerning applicants who claim appropriate training and skills in administering intravenous injections.

(e) Following the examination and evaluation of candidates, the Warden, with the concurrence of the Executive Director, shall select the executioners.

(f) The Executive Director/designee shall contact those chosen for the primary and back-up execution teams to notify them of their selection and to verify their willingness and availability to perform the duties of execution by injection.

(g) If any person rescinds his original offer to participate, the Warden, Executive Director and Deputy Warden will select a replacement.

(3) If the judgment of death is to be carried out by shooting, the Executive Director/designee shall select a five-person firing squad of peace officers.

(a) A five-person execution team, plus one alternate and a team leader, shall be chosen for the firing squad.

(b) The alternate shall be selected to replace any member of the firing squad who is unable to discharge his required functions.

(c) Persons selected for the firing squad shall be POST certified peace officers.

(d) The Executive Director and Warden shall be responsible for the selection process.

(e) The final choice of firing squad members shall be the responsibility of the Warden with the concurrence of the Executive Director/designee.

(f) The Executive Director/designee shall contact those

chosen for the firing squad, alternates and team leader to notify them of their selection and to verify their willingness and availability to perform the execution duties.

(g) If any person rescinds his original offer to participate, the selection team shall select a replacement.

R251-107-5. Demonstration and Public Access.

(1) Parking or standing during the execution event from 1700 hours until two hours after the execution is prohibited:

(a) on Pony Express Road between 13800 South and 14600 South;

(b) on Minuteman Drive between 14400 South and 14600 South;

(c) on 14600 South from the Utah Roses to Minuteman Drive;

(d) on the I-15 freeway or its ramps;

(e) on 13800 South from Pony Express Road to the railroad tracks; and

(f) in any other location posted for "no parking" or restricted parking.

(2) Parking on Pony Express Road between 13800 South and 14600 South is posted and prohibited 24 hours a day.

(3) The Executive Director may permit limited access to a designated portion of prison property on the East Frontage Road south of the East Bench road block for the public to gather to observe the prison or demonstrate during an execution event.

(4) The demonstration/public staging area located north of the 14800 South road block on East Frontage Road shall be the location for demonstrators and the general public.

(5) If more people gather at the demonstration/public staging area than can be accommodated, an overflow area shall be made available in the park-and-ride parking area west of the south-bound on-ramp on the Bluffdale interchange.

(6) Access shall be limited to 1700 hours the day prior to the scheduled execution date and last up to six hours following the execution or any stay, unless permission is earlier withdrawn.

(7) Security shall be provided at the public area to try to prevent physical confrontations between observers/demonstrators with differing points of view.

(8) To avoid the possibility of any group raising First Amendment issues based on the Department favoring one group over another, demonstrators shall not be separated according to their views regarding capital punishment.

(9) Motor vehicles are not permitted at the designated location. Persons at the location or en route to or from the site are subject to all applicable state and federal laws, rules and regulations and local ordinances including, without limitations, those relating to traffic control, pedestrian traffic, parking, noise, and parade permits.

(10) No person may block, obstruct, or interfere with prison traffic or communication.

(11) No person may damage, destroy or take public property, nor may any person build or erect any structure nor leave behind any object, substance or material.

(12) No person may violate the intent of clearly marked signs, fences, doors or other indicant relative to prohibitions against entering any prison property or facility for which permission to enter may not be marked.

(13) The Salt Lake City Police Department will provide officers for control at public assembly locations. Their duties include restraining, searching and transporting arrested persons to the Salt Lake County Jail.

(14) The Department neither recognizes, nor is bound by, the policies, allowances or arrangements which may have occurred at prior executions, events or on prior occasions, and by this rule any arrangement provided for public access at previous executions or demonstrations is invalidated.

(15) The Executive Director may at any time withdraw permission without notice in the event of riot, disturbance, or other factors that in the opinion of the Warden/designee or Executive Director/designee jeopardizes the security, peace, order or any function of the prison.

R251-107-6. Visitor Parking.

(1) Parking shall be prohibited:

(a) on Pony Express Road, which is the West Frontage Road, from 13800 South, which is the Timpanogos Facility road, to 14600 South;

(b) on Minuteman Drive, which is the East Frontage Road, from Road Block #8 at 13800 South to the 14600 South;

(c) on 14600 South between Minuteman Drive and the west end of USP property;

(d) on 13800 South from Pony Express Road west to the USP property line; and

(e) anywhere on the I-15 freeway or its ramps between 13800 South and 14600 South.

(2) Parking instructions shall be given by officers at roadblocks to drivers entering controlled areas. Vehicles parked in violation of R251-107(1)(a-e) shall be impounded.

(3) Drivers disobeying traffic or parking instructions of peace officers shall be subject to arrest.

(4) Pedestrians entering or attempting to enter controlled or restricted areas shall be warned to leave and shall be subject to arrest if they fail to comply.

(5) Peace officers from allied agencies shall be responsible for most of the traffic and parking enforcement.

(6) In general, the individual enforcement responsibility should include:

(a) I-15, Utah Highway Patrol;

(b) West Frontage Road, Salt Lake County Sheriff's Department;

(c) East Frontage Road, Draper City Police Department; and

(d) spectator/demonstrator staging area, Salt Lake City Police Department.

(7) The Utah Highway Patrol shall arrange to have two wreckers available, if needed.

(8) Department South Point Security and Enforcement Unit shall assist when needed and appropriate.

R251-107-7. Witnesses.

(1) The Department will implement the standards and procedures for inmate witnesses outlined in Section 77-19-11.

(2) As a condition to attending the execution, each designated witness may be required by the Department to execute an agreement setting forth their willingness to conduct themselves while on prison property in a manner consistent with

the legitimate penelogical, security and safety concerns as delineated by the Department.

(3) Witnesses wishing to have interviews with the news media may do so before arriving at the staging area or after the execution.

R251-107-8. Personal Searches.

(1) News media representatives and inmate-invited witnesses shall be searched at the Training Center prior to being allowed into the escort vehicles.

(a) The search shall include a search by metal detector and rub search.

(b) News media representatives and witnesses shall be asked to empty pockets into evidence bags and surrender purses, briefcases, and other items in their possession, for safekeeping until they return from the execution.

(2) Government officials, the physician, and the State Medical Examiner shall be searched by metal detector, but shall not be rub searched unless there is suspicion that an official is carrying contraband.

(3) Strip search of witnesses shall be permitted only if there is a reasonable suspicion that the witness is concealing contraband or anything which would jeopardize safety or security or violate Section 77-19-11.

(4) Cameras and recording devices shall not be allowed at the execution site except for two pool cameras, which may be carried to the execution site waiting room, to be used after the execution has taken place.

(5) Department members may be searched upon a reasonable suspicion that a member is carrying contraband.

R251-107-9. News Media.

(1) The Department shall permit press access to the execution and information concerning the execution consistent with the requirements of the constitutions and laws of the United States and State of Utah.

(2) The Department and the Utah Code recognize the need for the public to be informed concerning executions.

(a) The Department will participate and cooperate with the news media to inform the public concerning the execution; and

(b) information should be provided in a timely manner.

(3) If the condemned person is willing, the Department may allow an opportunity for the condemned to speak with the news media.

(4) The Executive Director shall be responsible for selecting nine members of the press and broadcast news media who will be permitted to witness the execution.

(a) After the court sets a date for the execution of the death penalty, news media members may request permission to witness the execution by directing the request, in writing, to the attention of the Executive Director at least 21 days prior to the execution.

(b) When administrative convenience or fairness to the news media dictates, the Department, in its discretion, may extend the request deadline.

(c) Requests for consideration may be granted by the Executive Director provided they contain the following:

(i) a statement setting forth facts showing that the requesting individual falls within the definition of member of the "press" and "broadcast news media" as set forth in this rule;

(ii) an agreement to act as a pool representative for other news gathering agencies desiring information on the execution;

(iii) an agreement that the media member will abide by all of the Division of Institutional Operations' conditions and policies while in attendance at the execution; and

(iv) agreement that they will conduct themselves consistent with existing Department standards.

(d) Upon receipt of media member's request for permission to attend the execution, the Executive Director may take the steps necessary to verify the statements made in the request. After verifying the information in the request, selection of witnesses shall be made by the Executive Director.

(e) The Executive Director shall name nine media members who meet the requirements set forth in this rule and in Section 77-19-11 and may select them from the following:

(i) two Salt Lake City daily newspapers;

(ii) three television stations licensed and broadcasting daily in the State of Utah;

(iii) one newspaper of general circulation in the county in which the crime for which the condemned is to be executed was committed;

(iv) one radio station licensed and broadcasting in the State of Utah; and

(v) two from a pool of news media organizations either broadcast, print or wire services.

(f) In the event that the Executive Director is unable to name a media member from each of the above-described organizations, he shall name other qualifying media members to attend until a total of nine media members have been named.

(g) No media members other than the nine named to attend the execution as described in this rule shall be permitted to witness the execution.

(h) Additional members of the press and broadcast news media who request and receive permission from the Executive Director shall be permitted on prison property during the execution at a location designated by the Executive Director.

(i) The Department shall arrange for pre-execution briefings, distribution of media briefing packages, briefings throughout the execution event, and post-execution briefings by the news media who witnessed the execution.

(j) No special access nor briefings will be provided to members of the press who are not selected as witnesses nor selected for the alternate site.

(k) Two photographers shall be appointed as pool photographers to film the execution site following clean up.

(l) One photographer shall provide for the needs of the electronic media and the other shall take photos for the print media.

(m) The pool photographers should be selected from agencies other than those represented among the nine witnessing the execution.

(n) If any attempt is made to photograph in any area or at any time other than that specifically authorized, the photographer shall be expelled, film confiscated and criminal charges, if appropriate, filed.

(5) The Warden shall permit the nine members of the press and broadcast news media, selected by the Executive Director, to witness the execution.

(6) Each media member attending the execution shall be carefully searched prior to admittance to the execution chamber.

(a) No strip search of any media member shall be conducted unless and until the Warden has reasonable suspicion to believe the media member is concealing weapons, drugs, audio or visual recording devices, or any other item not expressly permitted on prison property or at the execution.

(i) Electronic or mechanical recording devices include still, moving picture or videotape cameras, tape recorders or similar devices, broadcasting devices, or artistic paraphernalia, including notebooks, and drawing pencils or pens.

(ii) Only a small notebook and a pen or pencil issued by the Department shall be permitted.

(b) In the event of a strip search, the search shall be conducted in private, away from the execution area.

(i) If the media members are found not to be concealing any of the items described, they will be permitted to return to the execution site and attend the execution.

(ii) Any media member found to possess prohibited items shall be escorted from the execution area, from prison property and shall be subject to criminal charges.

(c) Persons representing the news media witnessing the execution shall be required to sign a statement or release absolving the institution or any of its staff from any legal recourse resulting from the exercise of search requirements or other provisions of the witness agreement.

(d) The Warden shall not exclude any media member duly selected from attendance at the execution except as described in these policies, nor may the Warden cause a selected media member to be removed from the execution chamber unless the media member:

(i) refuses to submit to a reasonable search as permitted in these policies;

(ii) faints, becomes ill or requests to be allowed to leave during the execution;

(iii) causes a disturbance within the execution chamber that disrupts the conduct of the execution; or

(iv) refuses or fails to abide by the conditions and policies set forth by the Department.

(e) The execution chamber shall be arranged so as to provide space for the attending media members and the space arranged shall have a view of the execution site, with the exception of:

(i) a view of the members of the firing squad, if employed; or

(ii) if lethal injection is chosen, those directly administering the method of execution, who shall be concealed from the view of the media members so that their identities will remain unknown.

(f) The selected media members shall be transported as a group to the execution location prior to the execution and shall be allowed to remain there throughout the proceeding.

(g) The Department shall designate a representative or representatives to remain with the media members throughout the execution proceedings for the purpose of supervising and answering questions related to the execution.

(h) Media members shall be admitted to the execution area on the date set for the execution only after:

(i) the original letter granting permission to attend along with proof of identification have been presented at the staging area;

(ii) being issued special identification credentials;

(iii) receiving an orientation by the Executive Director/designee; and

(iv) signing an agreement to abide by conditions required of media witnesses to the execution.

(i) After the execution has been completed and the site has been restored to an orderly condition, news media members may be permitted to return to the execution chamber for purposes of filming, photographing and recording the site.

(i) Re-entry to the site shall be permitted only after the site has been restored to an orderly condition, including:

(A) removal of the body of the condemned;

(B) evacuation of those involved in administering the execution; and

(C) clean up of the execution site.

(ii) Restoring the site to an "orderly condition" prior to the filming opportunity shall not unnecessarily disturb the physical arrangements for the execution.

(iii) Media members permitted to return to the execution chamber for the filming and recording of the site shall include:

(A) the news media members who were selected to witness the execution;

(B) one pool television photographer; and

(C) one pool newsprint photographer.

(iv) The film/videotape shall not be used in any news or other broadcast until made available to all agencies participating in the pool. All agencies receiving the film/videotape will be permitted to use them in news coverage and to retain the film/videotape for file footage.

(j) News media representatives shall, after being returned from the execution to the Training Center, act as pool representatives for other media representatives covering the event.

(i) The pool representatives shall meet at the designated media center and provide an account of the execution and shall freely answer all questions put to them by other media members and shall not be permitted to report their coverage of the execution back to their respective news organizations until after the non-attending media members have had the benefit of the pool representatives' account of the execution.

(A) News media members attending the post-execution briefing shall agree to remain in the briefing room until the briefing is over.

(B) The briefing shall end when the attending news media members are through asking questions or after 90 minutes, whichever comes first.

(ii) The media witnesses shall be transported as a group between the staging area and the execution chamber in Department transportation. Media members arriving late and missing the shuttle shall not be permitted to attend the execution.

(k) The Department may alter these policies to impose additional conditions, restrictions and limitations on media coverage of the execution when requirements become necessary for the preservation of prison security, personal safety or other legitimate interests which may be in jeopardy.

(l) Should extraordinary circumstances develop, additional

conditions and restrictions shall be no more restrictive than required to meet the exigent circumstances.

R251-107-10. Security Zones.

(1) During the execution operation, the USP property and certain other areas shall be divided into four security zones, including:

(a) the inner-perimeter zone which includes the area inside the double fence at the USP Draper site facilities and inside the fenced area of the Youth Corrections Center;

(b) the controlled-perimeter zone which includes all USP property at the USP Draper site on both sides of I-15;

(c) the restricted zone which includes a buffer area bordering the controlled zone on USP property which will be designated by roadblocks; and

(d) the extended zone which includes I-15 between 12300 South and 14600 South; the interchanges at 12300 South, which is Draper Crossroads; and 14600 South and the Department offices at 6100 South Fashion Blvd.

(2) The extent of required security zones may be tailored to meet the security needs of the particular execution.

(3) Trespass or unauthorized entry into the controlled perimeter zone may be prosecuted.

(4) Only those controlled areas specifically identified as accessible to the public-at-large or specified individuals may be entered.

(5) Access to the inner-perimeter, controlled, and restricted security zones shall be permitted only for persons whose names are on the security list or who have the proper Department ID.

(6) A request to restrict air space over USP property 500 feet above ground level shall be made to the Federal Aviation Administration for the duration of the execution, and shall be patrolled by an allied agency.

(7) Extended security zones, though accessible to the public, shall be patrolled and observed for:

(a) criminal violations;

(b) traffic violations;

(c) parking violations; and

(d) threatening or disruptive behavior.

(8) Persons engaged in unauthorized entry onto property may be prosecuted for trespass.

(9) Persons attempting to breach the inner-security perimeter shall be immediately arrested, and, if armed, may subject themselves to the use of whatever force is necessary to effect arrest, up to and including deadly force.

(10) Controlled areas east of I-15 shall be accessible to the general public to the extent specifically authorized by the Department.

R251-107-11. Regular Inmate Visiting.

All regular inmate visiting shall be suspended 24 hours prior to an execution and shall be resumed at the next scheduled visiting time after the execution.

R251-107-12. Authority of Executive Director.

The Executive Director/designee shall be authorized to make changes in policies and procedures that are necessary to ensure the interest of security, safety, and professionalism is maintained during the planning, training, and administering of the execution order.

KEY: corrections, executions*, prisons
January 15, 1998 77-19-10
Notice of Continuation October 21, 1997 77-19-11

R251. Corrections, Administration.
R251-703. Vehicle Direction Station.
R251-703-1. Authority and Purpose.

(1) This rule is authorized under Sections 64-13-14 and 64-13-10.

(2) The purpose of this rule is to define the Department's policy, procedure and requirements for the operation of the Vehicle Direction Stations located at the South Point and Central Utah Correctional facilities.

R251-703-2. Definitions.

(1) "Central Utah Correctional Facility" or "CUCF" means the institutional housing unit located in Gunnison.

(2) "Civilian" means vendor, deliveryman, construction worker, family members, friend, or other person not acting on behalf of UDC or an allied agency in an official capacity who needs access to prison property.

(3) "Department" means Department of Corrections.

(4) "DIO" means Division of Institutional Operations.

(5) "ID" means identification issued by an authorized government agency.

(6) "South Point" means the Uinta, Wasatch and Oquirrh facilities at the Utah State Prison.

(7) "VDS" means Vehicle Direction Station.

(8) "Visitor" means any person accessing prison property other than a Utah Department of Corrections employee, an inmate, or offender.

R251-703-3. Policy.

It is the policy of the Department that:

(1) the Department shall maintain a Vehicle Direction Station at the main entrance of South Point, and Central Utah Correctional Facility to control access of vehicles and persons entering or leaving institutional property;

(2) the Vehicle Direction Station (VDS) shall be staffed by an armed member of the Security Unit. The VDS shall be staffed from 0600 to 2200 hours daily;

(3) drivers using the entrance road to the VDS shall observe state traffic laws, keep the road free from equipment or vehicles that would obstruct visibility or impede the free flow of traffic, and follow directives of VDS staff charged with maintaining entry facilities;

(4) drivers and pedestrians using the entrance road shall heed directions of VDS staff, to ensure the safety of vehicular and pedestrian traffic;

(5) visitors to the prison shall be responsible to read and follow signs posted on the entrance road to the VDS prohibiting contraband from being introduced onto prison property;

(6) since the VDS is the initial control point for controlling contraband from being brought onto prison property, visitors may be subjected to search and seizure procedures as

provided by law;

(7) the VDS shall be the control point for limiting entry to institutional facilities to persons whose presence is necessary to the institution and to authorized visitors of inmates;

(8) to prevent escape of inmates, a vehicle exiting South Point or CUCF shall be subject to a search. Persons in exiting vehicles shall be required to provide identification and verification of clearance;

(9) civilians 16 years of age and older, in a vehicle or on foot, shall be required to have picture ID in their possession and to submit it for inspection, before being allowed through the VDS. If they do not have a valid ID:

(a) access to the prison through the VDS shall not be allowed;

(b) they shall not be allowed to wait or park on the entrance road to any institutional facility or on any roads adjacent to an institutional facility; but

(c) they may be allowed to wait in a designated parking area adjacent to the VDS;

(10) civilians under 16 years of age shall not be permitted access unless accompanied by an approved adult;

(11) civilians found in the possession of weapons or contraband at the VDS under circumstances which do not constitute a violation of law shall be required to leave prison property;

(12) peace officers from allied agencies shall either secure their firearms at the VDS, another approved location, or lock their weapons in their vehicle trunk if the vehicle will not penetrate the secure perimeter;

(13) persons who have a valid outstanding warrant may be arrested and either cited or transported, depending on the needs of the UDC and the agency holding the warrant;

(14) persons who have a valid outstanding warrant, if not arrested, may be denied entry to prison property until the warrant has been adjudicated; and

(15) visitors shall comply with all directives of VDS officers.

KEY: prisons
January 15, 1998 64-13-14
Notice of Continuation November 3, 1997

R251. Corrections, Administration.
R251-707. Legal Access.
R251-707-1. Authority and Purpose.

(1) This rule is authorized by Sections 63-46a-3, 64-13-7, 64-13-10 and 64-13-17 which allow the Department to adopt procedures in accordance with its responsibilities.

(2) The purpose of this rule is to provide the policy and procedures for inmates under the control of the Institutional Operations Division regarding access to courts and counsel.

R251-707-2. Definitions.

(1) "Attorney" means a member of the legal profession who has been licensed by a state and who has a current and valid license or bar card allowing him to practice law; lawyer; counsel; esquire;

(2) "Attorney Representatives" means paralegals, law clerks, investigators and other attorneys who are acting under the authority and supervision of the attorney of record;

(3) "CUCF" means Central Utah Correctional Facility located in Gunnison;

(4) "DIO" means Division of Institutional Operations;

(5) "North Point" means collectively, Timpanogos, Lone Peak and Olympus Correctional Facility;

(6) "Out-Count Status" means any inmate under legal supervision or confinement of the Utah Department of Corrections who is housed at any location other than the Draper or Gunnison sites;

(7) "Prison" means the Utah State Prison in Draper and CUCF in Gunnison;

(8) "Probable Cause" means sufficient knowledge of articulable facts or circumstances to lead a reasonable person to conclude that another person has committed, is committing, or is about to commit a crime or a violation of a legally enforceable policy or rule;

(9) "Service of Process" means the service of writs, summonses, warrants and subpoenas to inmate or UDC members;

(10) "South Point" means collectively, Oquirrh, Wasatch, Uinta and SSD facilities;

(11) "UDC" means the Utah Department of Corrections.

R251-707-3. Policy.

It is the policy of the Department that:

(1) legal assistance shall be provided to assist inmates in preparing and filing of an initial pleading in habeas corpus and civil rights suits challenging conditions of confinement arising from incarceration at the prison;

(2) inmates incarcerated at UDC facilities shall be allowed reasonable access to courts and counsel regarding any type of legal matter;

(3) access to courts and counsel shall be extended to those inmates in out-count status;

(4) the primary means of access to legal services shall be provided by contract attorneys paid by the Department, though inmates may secure legal counsel at their own expense if they prefer not to use the contracted legal firm or they may choose to represent themselves;

(5) inmate writ writers may represent themselves but may not represent other inmates;

(6) a law library shall not be provided, except that law books may be included among the books in the general inmate library system;

(7) before being admitted to the prison, attorneys shall present a current state bar card and photo I.D.;

(8) before being admitted to the prison, attorney representatives shall present a letter of introduction from the attorney of record and a photo I.D.;

(9) attorneys and their representatives shall not interfere with the safety, security or orderly operation of the prison;

(10) attorneys and their representatives shall be cleared through the Bureau of Criminal Identification prior to being approved for visitation; individuals with a criminal record shall be allowed to visit only with the approval of the Director of Institutional Operations/designee;

(11) attorneys may elect to have an attorney representative visit an inmate client instead of visiting personally;

(12) attorney representatives:

(a) have no standing on their own; their standing to visit is granted only in their role as representatives of the attorney of record;

(b) may be cleared for visits, if the attorneys they represent:

(i) submit a request, in writing, to the warden of the facility where the inmate is housed;

(ii) provide the name and title of the person assigned to represent the attorney; and

(iii) provide the name of the inmate to be visited;

(c) who have been cleared shall be afforded the same basic rights and privileges as those extended to the attorney of record;

(13) attorneys/representatives should not be denied visits, nor face inordinate delays when visits are prescheduled within the hours designated by the institution;

(14) in the event of exigent circumstances requiring an attorney/representative visit before appropriate screening can be completed, temporary approval for a visit may be approved by the Director of Institutional Operations/designee;

(15) inmate attorney/representative telephone calls shall originate from inside the institution and should not exceed thirty minutes in duration;

(16) attorneys/representatives may leave telephone messages requesting return calls;

(17) visits between inmates and counsel shall not be monitored and shall occur in facilities which permit privacy; however, privacy requirements shall not prohibit visual observation;

(18) attorneys/representatives should schedule on-site visits in advance, when possible;

(19) attorneys/representatives may schedule appointments with their inmate clients:

(a) at South Point, Monday through Friday, 0800 to 1100 hours and 1300 to 1500 hours;

(b) at North Point, Monday through Friday, 0730 to 1600;

(c) at CUCF, Monday through Friday, 0800 to 1100 hours and 1300 to 1500 hours;

(d) on weekends, holidays, and evenings with prior written clearance from the Director/designee of Institutional Operations;

(e) at Iron County Correctional Facility and county jails as requested;

(f) in out-of-state institutions, consistent with receiving agencies' policies and procedures; and

(g) during non-visiting hours without prior approval in exigent circumstances if authorized by DIO Director/designee.

(h) attorneys/representatives shall:

(i) follow Department and prison rules during visits to the institution;

(ii) conduct themselves in a manner consistent with safety and security requirements; and

(iii) comply with instructions of staff members while in the institution;

(20) physical inspections shall be made of all material brought into and out of any facility by any attorney/representative and shall be performed only in the presence of the attorney/representative;

(21) if any written material is declared privileged, it shall not be read; however, the attorney/representative may be required to leaf through these materials in the presence of staff, to assist in inspecting for contraband;

(22) if a reasonable suspicion exists to believe an attorney/representative possesses contraband, a rub search may be required before permitting the visit and an incident report shall be filed documenting the reasonable suspicion and incident;

(23) refusal to submit to search may result in the visit being denied and the attorney/representative being asked to leave the premises;

(24) strip searches of attorneys/representatives shall be conducted only if there is probable cause or reasonable suspicion of a particularized nature; an incident report shall be filed documenting the probable cause, incident and reason a strip search was necessary under the circumstances;

(25) if a warden/designee determines that a safety, security, control or management problem could result by allowing an attorney/representative access to a facility, the warden/designee may place reasonable restrictions upon access or deny access when necessary; an incident report shall be filed articulating the justification for denying access and documenting the incident;

(26) an attorney/representative may request a hearing before the Executive Director if he believes the denial of access for him or his legal representative was arbitrary, capricious, unreasonable or in violation of law or Department policy;

(27) any attorney/representative who violates any Department policy or rule or who provides false information may be denied access to the facility; and

(28) staff members authorized to accept service of process shall ensure that the requirements of proper service are appropriately satisfied at the DIO.

KEY: corrections, prisons, legal aid

January 15, 1998	**63-46a-3**
Notice of Continuation November 3, 1997	**64-13-7**
	64-13-10
	64-13-17

R277. Education, Administration.
R277-516. Library Media Certificates and Programs.
R277-516-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Basic Certificate" means the initial certificate issued by the Board which permits the holder to be employed as an educator in the public schools.

C. "Standard Certificate" means a certificate issued by the Board after a holder has demonstrated competency under the Basic Certificate.

R277-516-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-402(1)(a) which directs the Board to make rules regarding the certification of educators and ancillary personnel who provide direct student services, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify:

(1) the requirements for obtaining certificates issued by the Board for employment in the public schools as a library media specialist; and

(2) the standards which must be met by a post-secondary institution in order to receive Board approval of its program for library media personnel.

R277-516-3. Certification Requirements; Certificates Required for Employment.

A. An applicant for the Basic Library Media Certificate must do all of the following:

(1) hold, or be eligible to hold, a Basic or Standard Early Childhood Education, Elementary, Middle Education, Secondary, or Special Education Certificate;

(2) have completed a Board approved program for the preparation of library media professionals;

(3) have demonstrated competence in computer understanding and use; and

(4) have been recommended by an institution whose program or preparation in library media has been approved by the Board.

B. An applicant for the Standard Library Media Certificate must do all of the following:

(1) have completed at least two years of successful experience under a Basic Library Media Certificate or its equivalent; and

(2) be recommended by the employing school district with input from a teacher education institution.

C. A Library Media Certificate is required for service at the kindergarten, elementary, or secondary level. Persons assigned to serve as a district or regional media coordinator, supervisor, or director must also hold an Administrative/Supervisory Certificate.

R277-516-4. Standards for the Approval of Programs for the Preparation of Library Media Professionals.

The library media program of an institution may be approved by the Board if it requires students to demonstrate competence in all of the following:

A. Teaching library media skills to students.

B. The identification of staff needs in the use of media and technology for effective instruction.

C. Assisting teachers to integrate media concepts and materials into the curriculum.

D. Evaluating school library media services, collections, facilities, and personnel.

E. Using media to input and retrieve information from resources including bibliographic, electronic data bases, video, and community.

F. Developing a written selection policy which includes recognized sources and procedures for evaluating and selecting materials and equipment.

G. The production of media to meet learning objectives.

H. Organizing, classifying, and cataloging materials.

I. The knowledge of children's and young adult literature and its relationship to a student's interest and reading ability.

J. Administration, leadership, supervision, and management of a school library media center.

KEY: professional competency, school personnel, accreditation, libraries
1987 Art X Sec 3
Notice of Continuation January 14, 1998 53A-1-402(1)(a)
53A-1-401(3)

R277. Education, Administration.
R277-518. Vocational-Technical Certificates.
R277-518-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Provisional Certificate" means a certificate issued by the Board for a two year period which enables the holder to teach only in a specific vocational or technical field in the public school system.

C. "Basic Certificate" means the initial certificate issued by the Board which permits the holder to be employed in the public school system as an educator.

D. "Standard Certificate" means a certificate issued by the Board after a holder has demonstrated competence under the Basic Certificate.

E. "USOE" means the Utah State Office of Education.

R277-518-2. Authority and Purpose.

A. This rule is authorized by Article X, Section 3 of the Utah Constitution which vests general control and supervision of public education in the Board, Section 53A-6-101(1) and (2), U.C.A. 1953, which permits the Board to issue teaching certificates, and Section 53A-1-401(3), U.C.A. 1953, which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify standards for Vocational-Technical Certificates.

R277-518-3. Vocational-Technical Certificate Required.

A Vocational-Technical Certificate is required for all persons teaching vocational-technical programs at the secondary and adult level where high school credit is earned.

R277-518-4. Provisional Certificates.

A. A Provisional Vocational-Technical Education Certificate may be issued to an applicant who:

(1) has six years of occupational experience in one of the following endorsement areas:

(a) agriculture;

(b) business;

(c) marketing;

(d) trade;

(e) industry;

(f) technology;

(g) home economics; or

(h) health occupations; and

(2) has been given a teaching assignment directly related to the applicant's occupational experience and which is in an area of endorsement.

B. A Provisional Vocational-Technical Certificate for the Handicapped, which is restricted to teaching in workshop centers for the handicapped, may be issued to an applicant who has 18 months of occupational experience in business or industry related to the teaching assignment given the applicant.

C. Verification of occupational experience must accompany an application for a provisional certificate. Periods of employment lasting less than one month and periods of employment prior to 16 years of age are not accepted for purposes of calculating the occupational experience requirement.

D. (1) A maximum of four years of post-secondary education and training in the same area as the teaching field may be accepted in lieu of required occupational experience.

(2) The trade, industrial, or technical occupational experience requirement may be waived if the applicant has passed a state-approved competency examination in the respective field at or above the established cut-off scores. The cut-off scores are one-half standard deviation below the national mean. Individual applicant scores may be used for certification purposes up to five years after completion of the respective examination.

E. Besides meeting the requirements of Subsection 4(A), an applicant for a Provisional Certificate to instruct in:

(1) barbering, cosmetology, or plumbing must also hold a valid license in the respective area issued by the Utah State Department of Business Regulation;

(2) a nurse's aide course must also be a licensed practical nurse or a registered nurse;

(3) a licensed practical nurse course must also be a registered nurse;

(4) a health occupations overview course must also have a minimum of an associate degree in an allied health area.

F. (1) A Provisional Certificate may be renewed for subsequent two-year periods by successfully completing a minimum of nine quarter hours, of which 4.5 quarter hours may be in-service approved by the Office, in any of the following areas:

(a) concepts, principles, and methods of teaching;

(b) human relations or educational psychology;

(c) curriculum development related to the program area;

(d) development and use of instructional materials and aids;

(e) facility management and safety;

(f) measurement and evaluation;

(g) vocational youth organizations, equity education, cooperative education, and vocational guidance;

(h) any modules taken from the Performance Based Teacher Education Program;

(i) other special courses and workshops preapproved by state specialists.

(2) A person teaching a vocational program up to one-half day in relation to the respective school schedule, whose regular employment is or has been in agriculture, trade, industry, technology, marketing, or health occupations, may, in lieu of the requirements of Subsection 4(F)(1), have the Provisional Certificate renewed for subsequent two-year periods upon the recommendation of the employing agency with written assurance of appropriate in-service teacher education or supervision and with the approval of the state vocational-technical education specialist concerned.

R277-518-5. Basic Certificate.

A. An applicant for a Basic Vocational-Technical Certificate with endorsement(s) must have:

(1) a baccalaureate degree in an approved teacher educational program, including 24 quarter hours of course work in the endorsement area in which the applicant intends to teach, and at least two years of successful related occupational experience; or,

(2) for home economics endorsements, one of the following:

(a) a baccalaureate degree in an approved home economics teacher education program, including 24 quarter hours of supporting course work in one of the approved home economics endorsement areas, and completion of one of the following work experience options:

(i) four hundred clock hours of directed cooperative work experience and six quarter hours of approved course work in the home economics endorsement area; or

(ii) two years or 4,000 clock hours unsupervised work experience directly related to the approved endorsement area; or

(b) a baccalaureate degree with a major in the occupational field in which the applicant intends to teach, including 18 quarter hours of teacher education course work and one year of related occupational experience.

B. The trade, industrial, and technical occupational experience requirement may be waived if the applicant has passed a state approved competency examination at or above the established cut-off score. Cut-off scores are one-half standard deviation below the national mean. Individual applicant scores may be used for certification purposes up to five years after completion of the respective examination.

R277-518-6. Standard Vocational-Technical Certificate.

An applicant for the Standard Vocational-Technical Certificate with endorsements must have:

A. Completed at least two years of successful teaching experience under a Provisional or Basic Vocational-Technical Certificate or its equivalent; and

B. Received the recommendation of the employing school district.

KEY: teacher certification, professional education, vocational education
1987 Art X Sec 3
Notice of Continuation January 14, 1998 53A-6-101(1) and (2)
53A-1-401(3)

R277. Education, Administration.
R277-600. Student Transportation Standards and Procedures.
R277-600-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Density" means the number of eligible students divided by the approved total bus route miles plus half of the deadhead miles.

C. "Adjusted/approved costs" means the Board approved costs of transporting eligible students from home to school to home once each day, required deadhead miles, after-school routes, approved routes for handicapped and vocational students attending school outside their regularly assigned attendance boundary, and a prorated portion of the bus purchase prices less salvage value.

D. "Bus route miles" means operating a bus with passengers.

E. "Deadhead" means operating a bus when no passengers are on board.

F. "Office" means the Utah State Office of Education.

G. "ADA" means average daily attendance.

H. "ADM" means average daily membership.

I. "Hazardous" means danger or potential danger which may result in injury or death.

J. "M.P.V." means multipurpose passenger vehicle: any motor vehicle with less than 10 passenger positions, including the driver, which cannot be certified as a bus.

K. "Out-of-pocket expense" means gasoline, oil, and tire expenses.

R277-600-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public schools in the Board, by Section 53A-1-402(1)(e) which directs the Board to establish rules for bus routes, bus safety and other transportation needs and by Section 53A-17a-126 and 127 which provides for distribution of funds for transportation of public school students and standards for eligibility.

B. The purpose of this rule is to specify the standards under which districts may qualify for state transportation funds.

R277-600-3. General Provisions.

A. State transportation funds are used to reimburse districts for the direct costs of transporting students to and from school. The Board defines the limits of district transportation costs reimbursable by state funds in a manner that encourages safety, economy, and efficiency.

B. Allowable transportation costs are divided into two categories. Expenditures for regular bus routes established by the district, and appropriated by the state, are termed A category costs. Other methods of transporting students to school are termed B category costs. The Board devises and distributes a formula to determine the reimbursement rate for A category costs. The formula factors are density and adjusted/approved costs. B category costs are approved on a line-by-line basis by the Office after comparing the costs submitted by a district with the costs of alternative methods of performing the function.

C. The Office shall develop a uniform accounting procedure for the financial reporting of transportation costs. The procedure shall specify the methods used to calculate allowable transportation costs. The Office shall also develop uniform forms for the administration of the program.

D. All student transportation costs are recorded. Accurate mileage records are kept by program. Records and financial worksheets shall be maintained during the fiscal year for audit purposes.

R277-600-4. Eligibility.

A. State transportation funds shall be used only for transporting eligible students.

B. Eligibility for elementary students and secondary students, including seventh and eighth grade students, is determined in accordance with the mileage from home specified in Section 53A-17a-127(1) and (2) to the school attended upon assignment of the local board.

C. A student who falls under the school finance law definition of handicapped student, regardless of distance from the school attended upon assignment of the local board, is eligible.

D. Students who attend school for at least one-half day at an alternate location are expected to walk distances up to 1 and one half miles.

E. A school district that implements double sessions as an alternative to new building construction may transport, one-way to or from school, with Board approval, affected elementary students residing less than one and one-half miles from school if the local board determines the transportation would improve safety affected by darkness or other hazardous conditions.

F. The distance from home to school is determined as follows: From the center of the public route (road, thoroughfare, walkway, or highway) open to public use, opposite the regular entrance of the one where the pupil is living, over the nearest public route (thoroughfare, road, walkway, or highway) open regularly for use by the public, to the center of the public route (thoroughfare, road, walkway, or highway) open to public use, opposite the nearest public entrance to the school grounds which the student is attending.

R277-600-5. Handicapped Student Transportation.

A. Handicapped students are transported on regular buses and regular routes whenever possible. Districts may request approval, prior to providing transportation, for reimbursement for transporting handicapped students who cannot be safely transported on regular school bus runs.

B. Districts may be reimbursed for the costs of transporting or for alternative transportation for trainable mentally retarded students, severely motor handicapped students, and severely multiple handicapped students to approved special programs.

C. Transportation is provided by the Utah Schools for the

Deaf and the Blind for students who are transported to its extension classes. Exceptions may be approved by the Office.

R277-600-6. Requirements for Bus Route Approval.

A. Transportation is over routes proposed by local boards and approved by the Office. Information requested by the Office must be provided prior to approval of a route. A route usually is not approved for reimbursement if an equitable student transportation allowance or a subsistence allowance accomplishes the needed transportation at less cost. A route must:

(1) traverse the most direct public route;

(2) be reasonably cost effective related to other feasible alternatives;

(3) provide adequate safety;

(4) traverse roads that are constructed and maintained in a manner that does not cause property damage; and

(5) include an economically adequate number of students.

B. The minimum number of regular students required to establish a route is ten; the minimum number of handicapped students is five. A route may be established for fewer students upon special permission of the State Superintendent.

C. The local district designates safe areas for bus stops. To promote efficiency, the minimum distance between bus stops is 3/10 of a mile. Bus routes shall avoid, whenever possible, bus stops on dead-end roads. A student is expected to walk to bus stops up to one and one-half miles from home depending on the age and ability of the student. Special education students are expected to walk to bus stops commensurate with their ability.

D. Changes in existing routes or the addition of new routes must be reported to the Office as they occur for approval.

E. Early home routes do not qualify for state reimbursement unless approved by the Office prior to initiation.

F. Transporting eligible students home after school activities held at the student's school of regular attendance and within a reasonable time period after the close of the regular school day is approved route mileage.

G. A route may be approved as an alternative to building construction upon special permission of the Office if the route is needed to allow more efficient district use of school facilities. Building construction alternatives include elementary double sessions, year-round school, and attendance across district boundaries.

R277-600-7. Approved Deadhead Mileage.

Deadhead mileage included in adjusted/approved costs is calculated as follows:

A. Deadhead mileage to and from school: mileage from the garage or bus storage area to the first pickup point, mileage between schools for other bus runs, and mileage from the last run in the morning and evening from the last stop to the garage or storage area.

B. Other deadhead mileage: mileage due to bus driver training and driving to service or repair sites.

R277-600-8. Alternative Transportation.

Bus routes that involve a large number of deadhead miles are analyzed for reduction or to determine if an alternative method of transporting students is more efficient. Approved alternatives include the following:

A. The costs incurred in transporting eligible pupils in a district M.P.V. is not an adjusted/approved expense.

B(1) The costs incurred in paying eligible students an allowance in lieu of school district-supplied transportation is an adjusted/approved expense. A student is reimbursed for the mileage to the bus stop or school, whichever is closer, nearest the student's home and for reasonable and necessary out-of-pocket costs associated with student transportation. The allowance shall not be less than the standard mileage rate deduction permitted by the United States Internal Revenue Service for charitable contributions, nor greater than the reimbursement allowance permitted by the Utah Department of Administrative Services for use of privately owned vehicles set forth in the Utah Travel Regulations. The trip mileage is paid for by car, one per family;

(2) a student allowance is made to the student and not to the parent for transporting one's own child or other students. This does not restrict parents from pooling resources, but it does restrict payments in excess of out-of-pocket costs;

(3) if a student or the student's parent is unable to provide private transportation, with prior state approval, an amount equivalent to the student allowance is paid to the school district to help pay the costs of district transportation;

(4) the student's mileage shall be measured and certified in district records. The student's ADA as entered in school records is used to determine the student's attendance.

C(1) the cost incurred in providing a subsistence allowance is an adjusted/approved expense. A parent is reimbursed for a student's room and board when a student lives at a site nearer to the assigned school, if the student does not have a school facility or bus service available within approximately 60 miles of the student's residence. Payment shall not exceed the Substitute Care Rate for Family Services for the current fiscal year. Adjustments for changes made in the rate during the year are included in the allowance. In addition to the reimbursement for room and board, the subsistence allowance includes the costs of two round trips per year. The costs are calculated on the basis of actual mileage traversed from home to school at the rate prescribed in R277-600-8B(1);

(2) a subsistence allowance is not applicable to a parent who maintains a separate home during the school year for the purpose of closer location to a school. The parent's residence during the school year is the residence of the child;

D. The cost incurred in engaging in a contract or leasing for transportation is an adjusted/approved expense. The amount reimbursed to districts using commercial contracts is determined in accordance with transportation costs per pupil in comparable districts. Reimbursements for districts using a leasing arrangement are determined in accordance with the comparable cost for the district to operate its own transportation. Under a contract or lease, the school district's transportation administrator's time shall not exceed 1% of the commercial contract cost. Eligible student counts, bus route mileage, and bus inventory data are required as if the district operated its own transportation.

R277-600-9. Other Reimbursable Expenses.

State transportation funds may be used to reimburse a

district for the following costs:

A. Salaries of clerks, secretaries, trainers, drivers, a supervisor, mechanics and other personnel necessary to operate the transportation program.

(1) a full time supervisor may be paid at the same rate as other professional directors in the district. The supervisor's salary must be commensurable with the number of buses, number of eligible students transported, and total responsibility relative to other supervisory functions. A district may claim a percentage of the district superintendent's or clerk's salary for reimbursement if the district's eligibility count is less than 600 and a verifiable record of administrative time spent in the transportation operation is kept;

(2) The wage time for bus drivers includes:

(a) to and from school time: ten minute pre-trip inspection, actual driving time, ten minute post-trip inspection and bus cleanup, and 10 minute bus servicing and fueling;

(b) field trip time: set at a minimum of two hours driving time;

(c) activity trip time: wage time allowed under R277-600-9A(2)(a) plus a reduced amount for layover time.

B. Transportation employee benefits. Only a proportionate amount is allowed for health, accident, and life insurance.

C. Purchased property services;

D. Property, comprehensive, and liability insurance.

E. Communication expenses and travel for supervisors to workshops or the national convention.

F. Supplies and materials for vehicles, the transportation office and the garage.

G. Depreciation: The Office computes a formula annually to calculate depreciation.

H. Training expenses: The following maximum amounts are reimbursable for the driver's training stipend for each type of training a bus driver successfully completes:

(1) basic course, 24 hours: $135;

(2) in-service, 8 hours: $50;

(3) defensive driving, 8 hours: $50;

(4) first aid and emergency care, 8 hours: $50.

I. Other related costs approved by the Office.

R277-600-10. Non-reimbursable Expenses.

A. Costs for district transportation of students which are not reimbursable may be paid for from general funds of the district or from the proceeds of a tax rate authorized for districts. The tax rate authorized for transportation may not exceed .0002 tax rate. The revenue may be used:

(1) to transport ineligible students to and from school;

(2) for transportation to interscholastic activities;

(3) for transportation to night activities; and

(4) for field trip admissions.

B. Transportation of students in areas where walking constitutes a hazardous condition, as determined by the local board, may be provided by the Board from general funds from the district or from the tax specified in Subsection 10(A). An area is determined to be hazardous on the basis of an analysis of the following factors:

(1) volume, type, and speed of vehicular traffic;

(2) age and condition of students traversing the area;

(3) condition of the roadway, sidewalks and applicable means of access in the area; and

(4) environmental conditions.

C. Expenditures for uses of school district buses and equipment which are not adjusted/approved costs must be deleted when adjusted/approved transportation costs are calculated. Bus and equipment costs must be reduced on a pro rata basis for the miles not connected with adjusted/approved costs.

D. Expenses determined by the Office to be not directly related to transportation of eligible students to and from school are not reimbursable.

R277-600-11. Exceptions.

A. When undue hardships and inequities are created through exact application of these standards, districts may make a request for an exception to these rules on individual cases. Such hardships or inequities may include written evidence demonstrating that no significant increased costs (less than one percent of a district's transportation budget) is incurred due to a waiver or that students cannot be provided services consistent with the law due to transportation restrictions.

B(1) a district shall not be penalized in the computation of its state allocation for the presence on a to and from school route of an ineligible student who does not create an appreciable increase in the cost of the route;

(2) there is an appreciable increase in cost if, because of the presence of ineligible students, any of the following occur:

(a) another route is required;

(b) a larger or additional bus is required;

(c) a route's mileage is increased;

(d) the number of pick-up points below the mileage limits for eligible students exceeds one;

(e) additional time is required to complete a route.

(3) ineligible students may ride buses on a space available basis. An eligible student may not be displaced or required to stand in order to make room for an ineligible student.

R277-600-12. Special State Educational Field Trip Money.

The Board administers the special appropriation for the costs of transportation for educational field trips.

A. A field trip is an educational field trip if the students are participants in a learning situation during the field trip. The trip must be programmed to become an extension of the classroom. Transportation for participants in activity events, including competitive music events, drill teams, speech, arts, sports, and commercial events is not covered by educational field trip funds.

B. Educational field trip records shall show:

(1) the number of bus miles and students transported; and

(2) indirect costs associated with a field trip. No provisions are made to reimburse indirect costs.

C. The allocation is distributed to school districts on the basis of ADM. Each district may receive its proportionate share of the total WPU amount of small schools, kindergarten, and grades one through 12 WPUs. Unused funds may be carried over to future years but remain restricted funds.

KEY: school buses, school transportation
1987 Art X Sec 3

Notice of Continuation January 14, 1998 53A-1-402(1)(e)
53A-17a-126 and 127

R277. Education, Administration.
R277-605. Extracurricular Student Activities.
R277-605-1. Authority and Purpose.

A. This rule is authorized by Article X, Section 3 of the Utah Constitution which vests general control and supervision of public education in the Utah State Board of Education, Section 53A-1-401(3), U.C.A. 1953, which allows the Utah State Board of Education to adopt rules in accordance with its responsibilities, and Section 53A-1-402(1)(b), U.C.A. 1953, which directs the Utah State Board of Education to adopt rules regarding access to programs.

B. The purpose of this rule is to specify standards associated with extracurricular activities.

R277-605-2. Standards.

A. Schools are prohibited from scheduling full-year physical education or athletic fitness and movement classes for specific school teams. In schools where in-season fitness and movement classes are scheduled, the classes shall not be used to violate the starting and stopping dates for practice and competitive play as prescribed by the Utah High School Activities Association. This standard is aimed at helping restore equity to high school competitive sports programs.

B. All head coaches must hold a current Utah Secondary Teaching Credential. Aides and paraprofessionals employed or used in coaching assignments must serve under the direct supervision of a certificated teacher.

C. School personnel, activity leaders, coaches, advisory, and other personnel shall not require students to attend out-of-school camps, clinics, or workshops for which the personnel, activity leaders, coaches, or advisory personnel receive remuneration from a source other than the school or district in which they are employed.

KEY: extracurricular activities
1987 Art X Sec 3
Notice of Continuation January 14, 1998 53A-1-401(3)
53A-1-402(1)(b)

R277. Education, Administration.
R277-606. Interschool Competitive Sports in High School.
R277-606-1. Authority and Purpose.

A. This rule is authorized by Article X, Section 3 of the Utah Constitution which vests general control and supervision of public education in the Utah State Board of Education, Section 53A-1-401(3), U.C.A. 1953, which allows the Utah State Board of Education to adopt rules in accordance with its responsibilities, and Section 53A-1-402(1)(b), U.C.A. 1953, which directs the Utah State Board of Education to adopt rules regarding access to programs.

B. The purpose of this rule is to specify rules governing high school intercompetitive sports so as to ensure that competitive sports are a positive aspect of school activities.

R277-606-2. Standards.

A. The Utah High School Association by-laws, policies, regulations, and interpretations dealing with high school sports programs shall be strictly adhered to with every effort to live both the letter and the spirit of the by-laws, policies, regulations, and interpretations.

B. (1) Coaches and other designated school leaders must diligently supervise their players at all times while on school-sponsored activities. This includes supervision on the field, court, or other playing sites, in locker rooms, in seating areas, in eating establishments, in lodging facilities, and while traveling.

(2) A coach or other designated school leader shall not exemplify negative role modeling by participating in the use of alcoholic beverages, tobacco, controlled substances, or promiscuous sexual relationships while on school-sponsored activities.

C. (1) Required or voluntary participation in summer or other off-season sports clinics, workshops, and leagues shall not be used as criteria for team membership or for the opportunity to try out for team membership.

(2) A summer workshop or clinic conducted by a school for any sport or activity must be limited to ten days within a two week period. A clinic or workshop session conducted for less than a full day is considered a full day session.

(3) Athletic classes conducted for specific school teams may not be scheduled throughout the regular school day. First and last period athletic assignments may not preclude a coach from teaching a full load of classes during the school day.

KEY: extracurricular activities
1987 Art X Sec 3
Notice of Continuation January 14, 1998 53A-1-401(3)
53A-1-402(1)(b)

R277. Education, Administration.
R277-610. Released-Time Classes for Religious Instruction.
R277-610-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Released-time" means a period of time during the regular school day when a student attending a public school is excused from the school, at the request of the student's parent, to attend classes in religious instruction given by a regularly organized church.

R277-610-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-402(1) which directs the Board to adopt minimum standards for public schools, and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify standards and procedures for public schools regarding released-time religious classes.

R277-610-3. Standards and Procedures.

A. Religious classes shall not be held in school buildings or on school property in any way that permits public money or property to be applied to, or that requires public employees to become entangled with, any religious worship, exercise, or instruction.

B. Students shall attend released-time classes during the regular school day only upon the written request of the student's parent or legal guardian.

C. A student shall not be excused from school, even upon the written request of a parent or guardian, at a time when that student should be in attendance at a regular class of the school for which credit is normally required for graduation or to complete the required course of study.

D. A school shall not keep records of attendance for released-time classes or use school personnel or any part of the school organization to regulate such attendance.

E. Records of attendance at released-time classes, grades, marks, or other data shall not be included in the reports made by the school to parents.

F. Teachers of released-time classes are not to be considered members of the school faculty or to participate as faculty members in any school function.

G. Schedules of classes for public schools shall not include released-time classes. At the convenience of the school, registration forms may contain a space indicating "released-time" designation. Scheduling shall be done on forms and supplies furnished by the religious institution and by personnel employed or engaged by the institution and shall occur off the premises of the public school.

H. Public school publications shall not include pictures, reports, or records of functions of released-time classes.

I. Public school teachers, administrators, or other officials shall not request teachers of released-time classes to exercise functions or assume responsibilities for the public school program which would result in a commingling of the activities of the two institutions.

J. Public school equipment or personnel shall not be used in any manner to assist in the conduct of released-time classes. No connection of bells, telephones, or other devices shall be made between public school buildings and institutions offering religious instruction except as a convenience to the public school in the operation of its own program. When any connection of devices is permitted, the pro rata costs shall be borne by the respective institutions.

K. Institutions offering religious instruction shall be regarded as private schools completely separate and apart from the public schools. Those relationships that are legitimately exercised between the public school and any private school are considered an appropriate relationship with institutions offering released-time classes, so long as public property, public funds, or other public resources are not used to aid such institutions.

KEY: religious education

1987	**Art X Sec 3**
Notice of Continuation January 14, 1998	**53A-1-402(1)**
	53A-1-401(3)

R277. Education, Administration.

R277-615. Foreign Exchange Students.

R277-615-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "USOE" means the Utah State Office of Education.

C. "J-1 foreign exchange student" means a foreign national secondary student who has entered the United States for up to one year for a cultural and educational experience and whose placement is sponsored by a Board-approved agency.

R277-615-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, Section 53A-2-206 which requires the Board to approve agencies sponsoring J-1 exchange students, and Section 53A-1-402(1)(b) which directs the Board to adopt rules regarding attendance.

B. This rule sets standards by which districts may include J-1 exchange students in the student membership count required for the apportionment of state funds.

R277-615-3. Board Approved Participation.

Each year the Board determines the number of J-1 exchange students whose participation in public education programs will be funded by the state appropriation. The number approved is based on available funds and the percentage of increase or decrease of the K-12 student population statewide.

R277-615-4. Student and Agency Eligibility.

A. Students approved for funded participation shall be:

(1) Sponsored by an agency approved by the United States Information Agency.

(a) The USOE maintains a current list of approved sponsoring organizations. The list is available from the USOE specialist for international education.

(b) The sponsoring agency must be working toward a one-to-one exchange.

(c) Requests for exceptions to USOE approved organizations are reviewed and approved by the USOE on an individual basis using the criteria for approval established in "Regulations Governing Exchange Visitor Programs," 1993, published by the United States Information Agency. This publication is available from all foreign student exchange group representatives, all host families, all schools attended by foreign exchange students, and the Specialist for International Education at the Utah State Office of Education; and

(2) approved for enrollment by the district of attendance prior to the student's arrival in the United States.

B. Approved agencies are allotted a specific number of placements annually. This number is specified, after negotiation with the sponsoring agency, by USOE staff based on outgoing exchange students placed by an agency. Placements are approved by the Board or its designee.

C. Allotted placements not completed by designated placement agencies by July 15 may be reallocated.

R277-615-5. District Reports.

A. A school district shall annually report to the USOE the number of J-1 exchange students accepted, the sponsoring agencies, and the J-1 exchange students' entry and exit dates.

B. A school district shall maintain the names of all J-1 exchange students accepted, the exchange students' local addresses, the sponsoring agencies, dates of acceptance by the local boards, and dates on which the USOE was notified of the acceptance.

R277-615-6. Representation.

The USOE works with sponsoring agencies and districts to assure an equitable representation of countries in individual schools.

R277-615-7. Foreign Exchange Student Promotion or Graduation.

A. Each district participating in the J-1 foreign exchange student program shall adopt a written policy outlining and explaining high school graduation and diploma options for J-1 exchange students.

B. All J-1 foreign exchange students shall provide a translated transcript to school officials as required by United State Information Agency regulations.

C. A J-1 foreign exchange student who desires to earn a graduation diploma shall provide an evaluated, translated transcript of courses to the assigned counselor prior to the student's registration at the school.

D. The USOE International Specialist shall develop and provide to school districts a list of approved individuals qualified to evaluate foreign transcripts.

E. Any costs associated with evaluation of foreign transcripts shall be the responsibility of the foreign exchange student or the host family.

F. Districts shall include in their policies, procedures and criteria for receiving "certificates of completion" or "promotion."

KEY: foreign students
July 16, 1996 Art X Sec 3
Notice of Continuation January 14, 1998 53A-2-206
53A-1-402(1)(b)

R277. Education, Administration.
R277-700. The Elementary and Secondary School Core Curriculum and High School Graduation Requirements.
R277-700-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "IEP" means individual education program.

C. "Special assignment teacher" means a teacher assigned to:

(1) alternative school settings with self-contained classrooms in which the teacher must teach several subjects;

(2) teach homebound students with the expectation that several subjects will be covered by the same teacher; or

(3) necessarily existent small or rural schools with limited faculty and enrollment in which teachers must teach more than three core subjects.

D. "Secondary school experience" means grades 7-12.

E. "Accredited" means evaluated and approved under the Standards for Accreditation of the Northwest Association of Schools and Colleges or the accreditation standards of the Board, available from the USOE Accreditation Specialist.

F. "USOE" means the Utah State Office of Education.

G. "Demonstrated proficiency" means a level of subject mastery as determined by the school district and may include such methods as tests, interviews, teacher evaluations, reports, and written work.

R277-700-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision of the public education system in the Board, Section 53A-1-402(1)(b) and (c) which directs the Board to make rules regarding competency levels, graduation requirements, curriculum, and instruction requirements, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify the minimum core curriculum for the public schools and high school graduation requirements.

R277-700-3. General Requirements - Course Standards.

The Board establishes minimum course description standards and objectives for each course in the required general core, which is commonly referred to as The Core Curriculum. Course descriptions for required and elective courses are developed cooperatively by local school districts and the Utah State Office of Education. The descriptions shall contain mastery criteria for the course and shall stress mastery of the criteria rather than completion of predetermined time allotments for subjects. Implementation and assessment procedures are the responsibility of local school districts.

R277-700-4. General Requirements - Teacher Qualifications.

Teachers may not be assigned to teach any course unless, for the subject area to which they are assigned, they hold a current Utah teaching certificate endorsed in the subject area, have completed an undergraduate or graduate major or minor in the subject area, have completed a Board approved in-service program, or have demonstrated competency in the subject area.

R277-700-5. General Requirements - Special Assignment Teachers.

A. Special assignment teachers must hold a Basic or Standard Certificate with endorsement(s) for the course(s) which they are assigned to teach. In addition, personnel must have completed at least nine quarter hours of state approved college or in-service course work in each of the subject areas in which they are assigned.

B. Special assignment teachers are temporarily authorized for the duration of their special assignment and do not receive a permanent endorsement for the subject area until they have completed the equivalent of a subject matter minor, at least 24 quarter hours of state approved college course work in the field, or have been declared competent to teach the subject by the

Utah State Office of Education Committee on Demonstrated Competency.

R277-700-6. General Requirements - Unit of Credit.

A. A unit of credit or fraction thereof shall be given upon satisfactory completion of a course or learning experience in compliance with state course standards. Students also may complete a course on a performance basis in which case assessment of mastery will be the responsibility of the local boards of education. Credit can be awarded only once for a specific required course with the same content during the secondary school experience.

B. A district may grant credit from among the following:

(1) successful completion of a course;

(a) offered by the district;

(b) approved by the district taken outside of the regular school day or school year;

(c) approved by the district for concurrent enrollment and offered by an accredited post-secondary institution; or

(d) offered by correspondence or extension that is approved and accredited by the district; or

(2) demonstrated proficiency by way of a district approved

(a) test developed by the state or district;

(b) standardized test;

(c) performance appraisal; or

(d) portfolio; or

(3) successful completion or demonstrated proficiency in an experimental program approved by the district.

R277-700-7. General Requirements - Instructional Time.

School districts shall organize flexible time blocks for instruction which accommodate outcome-based curriculum. To help the Board keep apprised of instructional time variations, districts shall submit their instructional time schedule to the Utah State Office of Education for approval.

R277-700-8. General Requirements - Student Education Plan.

A student education plan is cooperatively developed by the student, the student's parents, and designated school personnel. This plan is guided by general requirements and individual student interests and goals. It is formally reviewed, at least, at the beginning of grade one, at the end of grades three and six, and annually thereafter. Each student's high school plan shall identify an area of concentration, which may be as many as four to five units, in a cluster related to the student's post-secondary goal.

R277-700-9. General Requirements - Diploma.

In Utah's public schools, a high school diploma is granted to a student who has met Board curriculum requirements and any additional requirements of the local school district.

R277-700-10. Requirements for Elementary Education.

A. The Board shall establish standards for elementary education which include the identification of a general core curriculum. Implementation and formal assessment of student mastery of the general core curriculum are the responsibilities of the local boards of education. At a minimum, formal assessment shall occur during or at the completion of grades three and six. Informal assessment should occur on a frequent ongoing basis to ensure continual student progress. Provision for remediation for all students who do not achieve mastery is required.

B. Required Elementary Core Curriculum:

TABLE

REQUIRED ELEMENTARY CORE CURRICULUM
GRADES K-6

GENERAL CORE	OPTIONS	
LANGUAGE ARTS	SOCIAL STUDIES	FOREIGN LANGUAGE
Reading	Introductory Citizenship	
Writing	Principles and Practices	
Speaking		
Listening	ARTS	
MATHEMATICS	RESPONSIBLE HEALTHY LIFESTYLES	
SCIENCE	INFORMATION TECHNOLOGY	
LIBRARY MEDIA		

C. All handicapped students are required to demonstrate mastery of the core curriculum. If a student's handicapping condition precludes the successful demonstration of mastery, the IEP team, on a case by case basis, may exempt the student or modify the mastery demonstration to accommodate the student's handicap.

R277-700-11. Middle and High School Requirements.

A. The Board provides general direction and standards in secondary education. Students in grades seven and eight must earn a minimum of 12 units of credit. Students in grades nine through twelve must earn a minimum of 24 units of credit. Districts may require additional units of credit. Formal assessment of student mastery of the general core courses shall occur as a minimum during or at the completion of grades eight, ten, and twelve. Implementation and assessment of student mastery of the core courses are the responsibility of the local board.

B. Middle Education Core Curriculum:

TABLE

MIDDLE EDUCATION CORE CURRICULUM
GRADES 7-8 12 UNITS OF CREDIT REQUIRED

GENERAL CORE - 10.5 Units PLUS REQUIRED ELECTIVES 1.5

SUBJECT AREAS	REQUIREMENTS
Language Arts	2.0
Mathematics	2.0
Science	1.5
Social Studies	1.5
The Arts	1.0
Information Technology	Credit Optional
Responsible Healthy Lifestyles	1.5
Applied Technology Education	1.0
Technology, Life and Careers	
Library Media Skills Integrated into Subject Areas	

C. High School Core Curriculum:

(1) Required credits:

TABLE

HIGH SCHOOL CORE CURRICULUM
GRADES 9-12 24 UNITS OF CREDIT REQUIRED

GENERAL CORE - 14.5 Units PLUS REQUIRED ELECTIVES 9.5

SUBJECT AREAS	REQUIREMENTS
Language Arts	3.0
Mathematics	2.0
Science	2.0
Information Technology	Credit Optional
Social Studies	3.0
Arts	1.5
Responsible Healthy Lifestyles	2.0
Applied Technology Education Occupational Preparation	1.0
Library Media Skills	Integrated into Subject Areas
SELECTED ELECTIVES	9.5

(2) Any state-approved applied technology course, or the applied technology core course fulfills the applied technology education requirement.

(3) Selected electives units of credit provide a means for specialization related to student interest and post secondary goals.

(a) College Entry Cluster:

Foreign Language: 2.0 units of credit

Mathematics: 1.0 units of credit

English: 1.0 units of credit

Science: 1.0 units of credit

Electives: 4.5 units of credit

(b) Applied Technology/Job Entry Clusters:

Select one:

Technical Emphasis: 4.0 units of credit

Vocational Emphasis: 5.0 units of credit

Computer Science: .5 units of credit

(c) Electives: 4.0 - 5.0 units of credit

D. Informational Technology standards in the Middle Education and High School core curriculum may be taught either by integrating them into other areas of the curriculum or in a specific class. Integration requires the district to submit a plan detailing at what level and in which class each standard will be taught. Districts establishing a specific class may offer .5 units of credit.

E. All handicapped students are required to demonstrate mastery of the courses in the Middle Education and High School general core. If a student's handicapping condition precludes the successful demonstration of mastery, the IEP team, on a case by case basis, may exempt the student or modify the mastery demonstration to accommodate the student's handicap.

KEY: curricula
1994 Art X Sec 3
Notice of Continuation January 14, 1998 53A-1-402(1)(b)
53A-1-401(3)

R277. Education, Administration.
R277-701. Values Education.

R277-701-1. Definitions.

A. "Values" means principles or standards of worth.

B. "Value judgments" means judgments which rate things with respect to their worth.

C. "Values education" means the systematic effort to help students identify, acquire, and act upon personal and basic societal principles and human needs.

D. "Board" means the Utah State Board of Education.

R277-701-2. Authority and Purpose.

A. This rule is authorized under Article X, Section 3 of the Utah Constitution which vests general control and supervision of public education in the Board, Section 53A-1-401(3), U.C.A. 1953, which allows the Board to adopt rules in accordance with its responsibilities and Section 53A-1-402(1)(c), U.C.A. 1953, which directs the Board to adopt rules regarding curriculum and instruction.

B. The purpose of this rule is to specify standards for values education programs in school districts.

R277-701-3. Values Education.

Values education shall be included and primarily taught in the social studies curriculum of kindergarten through grade twelve. There shall be universal responsibility among all teachers for values education.

R277-701-4. Subject Matter.

A. Values education programs shall meet the requirements of Sections 53A-13-101, U.C.A. 1953.

B. Students shall be taught to value the rights and freedoms embodied in the founding documents, including the Declaration of Independence and the Constitutions of the United States and of the State of Utah, and to assume the commensurate personal and societal responsibilities which assure the perpetuation of those freedoms.

C. The school shall provide the setting and opportunities to teach by example and role modeling the following values:

(1) each individual has dignity and worth;

(2) a free society requires respect for persons, property, and principles;

(3) each individual has a right to learn and the freedom to achieve;

(4) each individual, regardless of race, creed, color, sex, ethnic background, or economic status, shall have equal opportunity;

(5) each individual has the right to personal liberties so long as the rights of others are not violated;

(6) each individual is responsible for personal choices and actions;

(7) each individual has a responsibility to the total society;

(8) a democratic government is based on rule of the majority with guaranteed protection of the rights of the minority;

(9) a democratic society is based on law;

(10) problems should be solved through reason and orderly processes;

(11) individuals should be tolerant of the religious beliefs of others and shall have freedom to exercise their own religious beliefs within the context of appropriate activity; and

(12) each individual has the right to work, to pursue an occupation, and to gain satisfaction from personal efforts.

D. Students shall be assisted in developing skill in value analysis in harmony with their maturity.

E. Students must be taught to recognize that there are inherent and inevitable value conflicts of both a personal and societal nature. Students must be assisted in developing skills to deal effectively with these value conflict situations.

R277-701-5. Methods.

A. Materials used in values education must be sensitive to the community's values, disclosed to parents, and available to parents for review upon request.

B. Pre-service and in-service programs shall be provided for training teachers in values development. Teacher preparation programs shall ensure that teacher candidates have the requisite knowledge base and are appropriately prepared to teach the concepts embodied in the statutes. State and local education agency in-service activities shall emphasize values education where appropriate.

C. Methods and procedures for teaching values shall facilitate change in behavior based upon the guided choice of the individual. Emphasis shall be upon individual student self-discipline and obligation. Programs to regulate inappropriate behavior shall be implemented.

KEY: education, curricula
1987 Art X Sec 3
Notice of Continuation January 14, 1998 53A-1-401(3)
53A-1-402(1)(c)

R277. Education, Administration.
R277-702. Procedures for the Utah General Educational Development Certificate.
R277-702-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "GED Test" means the General Education Development Test developed by the American Council on Education.

C. "Utah General Educational Development Certificate" means a certificate issued by the Board acknowledging competency on the part of the certificate holder in the areas tested by GED Test.

R277-702-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-402(1)(b) which directs the Board to adopt rules regarding access to programs, competency levels and graduation requirements, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to describe the standards and procedures for obtaining a Utah General Educational Development Certificate.

R277-702-3. Eligibility for GED Testing.

A. Admission to a GED Test requires the following:

(1) that the applicant be at least 18 years of age and the applicant's graduating class has graduated; or

(2) that if the applicant is 17 or 18 years of age and the applicant's graduating class has not graduated, the GED Testing Center requires the following:

(a) a letter from the school district within which the applicant resides indicating the applicant is not regularly enrolled in school;

(b) a letter from the applicant's parent or guardian authorizing the test (applicant age 18, or presenting a marriage license, is exempt from this requirement); and

(c) a letter from an employer or educational institution indicating its employment or acceptance of the applicant after passing the GED Test.

R277-702-4. Administrative Procedures and Standards for Testing and Certification.

A. The Board contracts with the General Educational Testing Services of the American Council on Education to administer the GED testing program in the state. The Board may contract with local educational institutions within the state to administer the tests and provide related testing services. The number and location of the institutions designated as testing centers is determined in a manner that ensures that the test is reasonably accessible to potential applicants. Testing centers must meet the GED testing service requirements in the GED Examiner's Manual.

B. Persons desiring to take a GED Test must complete an application available from any official GED Testing Center of the Board and be eligible to take the GED Test under Subsection 3.

C. Persons desiring to obtain a Utah General Educational Development Certificate must:

(1) complete an application for the certificate available from the Utah State Office of Education;

(2) obtain a standard score of at least 40 on each of the five test components of the GED Test and obtain an average standard score of 45;

(3) be a resident of the state, be employed on a regular basis in the state, or be assigned by military authority to a station in the state; and

(4) meet Utah and GED testing eligibility.

R277-702-5. Fee.

A. The Board, or its designee, shall adopt uniform fees for the General Educational Development Certificate and uniform forms, deadlines, and accounting procedures to administer this program.

B. A GED testing center, after consultation with the Board or its designee, shall adopt fees and forms for its GED Test services.

R277-702-6. Official Transcripts.

Test scores shall be accepted by the Board when original scores are reported by:

A. Board-approved GED testing centers;

B. Transcript Service of the Defense Activity for Non-Traditional Educational Support (DANTES);

C. Veterans Administration hospitals and centers; or

D. the GED Testing Service.

R277-702-7. Adult High School Credit.

A local board of education may adopt standards and procedures for awarding credit on the basis of test results which may be applied toward a diploma.

KEY: adult education, educational testing, student competency
1987 53A-1-402(1)(b)
Notice of Continuation January 14, 1998 53A-1-401(3)

R277. Education, Administration.
R277-709. Education Programs Serving Youth in Custody.
R277-709-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Youth in Custody" means a person under the age of 21 who is in the custody of a state agency other than the Utah State Training School, the Utah State Hospital, the State Division of Corrections, or the Utah State Prison, pursuant to a determination that the person is neglected, delinquent, or guilty of a criminal act. The term includes residents of detention centers, but excludes any child who is in custody solely because the parent wanted to provide the child with education at home or in a private school.

C. "Custody" means the status of being legally subject to the control of another person or a public agency.

D. "Determination of neglect, delinquency, or criminal activity" means a finding made by a legally authorized court or agency in accordance with state law.

R277-709-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-403(1) which makes the Board directly responsible for the education of youth in custody, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify operation standards and procedures for youth in custody programs.

R277-709-3. Student Evaluation and Education Plan.

A. Each student meeting the definition of youth in custody shall be evaluated at least every three years to determine the level and scope of the student's educational performance and the student's learning abilities. The evaluation shall include vision and auditory tests and shall specify known in-school and extra-school factors which may affect the student's school performance. The program receiving the student is responsible for obtaining the student's evaluation records, and, in cases where the records are not current, for conducting the evaluation as quickly as possible so that unnecessary delay in developing a student's education program is avoided.

B. Based upon the results of the student evaluation, an appropriate individual education plan shall be prepared for each youth in custody. The plan shall be reviewed and updated at least once each year or immediately following transfer of a student from one program to another, whichever is sooner. The plans are developed in cooperation with appropriate representatives of other service agencies working with the respective students. The plan shall specify the responsibilities of each of the agencies towards the student and is signed by each agency's representative.

C(1) the school district shall provide an education program for the student which conforms as closely as possible to the student's individual education plan. Educational services shall be provided in the least restrictive environment appropriate for the student's behavior and educational performance. Youth in custody who do not require special services beyond those which would be available to them were they not in custody shall be considered part of the district's regular enrollment and treated accordingly;

(2) youth in custody shall not be assigned to, or remain in, restrictive or non-mainstream programs simply because of their custodial status, their past behavior, or the inappropriate behavior of other students;

(3) education programs to which youth in custody are assigned shall meet the standards which are adopted by the Board for that type program. Compliance shall be monitored by the Utah State Office of Education in periodic review visits;

(4) custodial status alone does not qualify a student as being handicapped under laws regulating education for handicapped persons;

(5) educational services shall be sufficiently coordinated with non-custody programs to enable youth in custody to continue their education with minimal disruption following discharge from custody.

D. Youth in custody shall be admitted to classes within five school days following arrival at a new residential placement. If evaluation and individual education plan development are delayed beyond that period, the student shall be enrolled temporarily based upon the best information available. The temporary schedule may be modified to meet the student's needs after the evaluation and planning process has been completed.

E. When a student is released from custody or transferred to a new program, the sending program shall bring all available school records up to date and forward them to the receiving program within one week following notification of release or transfer.

R277-709-4. Operation Procedures.

A(1) the Board shall contract with school districts to provide educational services for youth in custody. The respective responsibilities of the Board, the school district, and other local service providers for education shall be established in the contract. A school district may subcontract with local non-district educational service providers for the provision of educational services;

(2) the Board may contract with entities other than school districts only if the Board determines that the school district is unable to provided adequate education services.

B. Youth in custody receiving education services by or through a school district are students of that district.

C. State funds appropriated for youth in custody are allocated on the basis of annual applications made by school

districts. The share of funds distributed to a district is based upon criteria which includes the number of youth in custody served in the district, the type of program required for the youth, the setting for providing services, and the length of the program. Funds approved for youth in custody projects can be expended only for the purposes described in the respective funding application. Unexpended funds may not be carried over from one fiscal year to the next, except by specific approval of the Board or a designee.

D. Federal funds available under Chapter I of the Education Consolidation and Improvement Act of 1981, P.L. 97-35, Title V, Subtitle D, for the education of youth in custody are allocated in accordance with the procedures of Subsection 4(C). The Board hereby incorporates by reference Public Law 97-35, Title V, Subtitle D, Sections 551 through 559, and regulations promulgated under that Act which are effective as of July, 1993.

E. The youth in custody program is separate from and not conducted under the state's education program for the handicapped.

F. The Board, or its designee, shall adopt uniform pupil and fiscal accounting procedures, forms, and deadlines for the youth in custody program.

G. Education staff assigned to youth in custody shall be qualified and appropriate for their assignments. The teaching certificate and endorsement held by a teacher shall be important in evaluating the appropriateness of a teacher's assignment but not controlling. Elementary teachers may teach secondary-age students who are functioning at an elementary level in the subjects in question. Teachers shall not be required to hold special education certificates, although such certificates are encouraged.

R277-709-5. Confidentiality.

A. Transcripts and diplomas prepared for youth in custody shall be issued in the name of an existing district school which also serves non-custodial youth and shall not bear references to custodial status.

B. School records which refer to custodial status, juvenile court records, and related matters shall be kept separate from permanent school records and shall be destroyed or sealed upon order of a court of competent jurisdiction.

C. Members of the interagency team which designs and oversees individual student plans shall have access, through team member representatives of the participating agencies, to relevant records of the various agencies. The records and information obtained from the records remains the property of the supplying agency and shall not be transferred or shared with other persons or agencies without the permission of the supplying agency.

R277-709-6. Advisory Council.

A. Each school district serving youth in custody shall establish a local interagency advisory council which shall be responsible for advising member agencies concerning coordination of youth in custody programs. Members of the council shall include, if applicable to the district, a representative of:

(1) the Division of Family Services;

(2) the Division of Youth Corrections;

(3) directors of agencies served in a district such as detention centers, secure lockup facilities and observation and assessment units;

(4) community-based alternative programs for custodial juveniles such as Heritage Group Home and Odyssey House; and

(5) the local school district.

B. The council shall adopt by-laws for its operation.

KEY: students, education, juvenile courts
1987 Art X Sec 3
Notice of Continuation January 14, 1998 53A-1-403(1)
53A-1-401(3)

R277. Education, Administration.
R277-710. Accelerated Learning Programs.
R277-710-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Programs for Gifted and Talented Students" means programs for children and youth whose superior performance or potential for accomplishment require a differentiated and challenging educational program to meet their needs in any one or more of the following areas:

(1) general intellectual;

(2) specific academic;

(3) visual or performing arts;

(4) practical arts;

(5) leadership;

(6) creative or productive thinking.

C. "Advanced Placement" means a cooperative educational endeavor sponsored by the College Board which serves accelerated learners who wish to pursue college-level studies while still in high school. Participating colleges grant credit or placement, or both, to students who score a grade of 3, 4, or 5 on the examination.

D. "Concurrent Enrollment" means a cooperative program between institutions of higher education and accelerated learners who enroll in one or more college courses prior to graduation from high school with credit earned to be applied toward full college matriculation.

R277-710-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-17a-120 which directs the Board to adopt rules for the expenditure of funds appropriated for accelerated learning and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify how the state appropriation for accelerated learning programs is distributed.

R277-710-3. Distribution of Funds.

A. Gifted and Talented Programs: Forty-six percent of the annual accelerated learning appropriation shall be allocated for Gifted and Talented programs. Each school district shall receive its share of funds allocated for gifted and talented

programs in the proportion that its number of weighted pupil units for kindergarten through grade twelve and necessarily existent small schools bears to the state total.

B. Advancement Placement Programs: Thirty-six percent of the annual accelerated learning appropriation shall be allocated for the Advanced Placement programs. Money is allocated on the basis of this amount divided by the total number of Advanced Placement exams passed with a grade of 3 or higher by students in the public schools of Utah. This results in a fixed amount of dollars per exam passed. Each participating school district receives the amount of money generated by students who successfully pass the advanced placement exam.

C. Concurrent Enrollment Programs: Eighteen percent of the annual accelerated learning appropriation shall be allocated to participating school districts based on each district's pro-rated amount according to the number of quarter hours of successful (grade of A, B, or C) college credit earned by students in that district.

D. The Board shall develop uniform pupil and fiscal accounting procedures, forms, and deadlines for administering these programs.

KEY: exceptional children, gifted children
1987 Art X Sec 3
Notice of Continuation January 14, 1998 53A-1-403(1)
53A-1-401(3)
53A-17a-120

R277. Education, Administration.
R277-716. Alternative Language Services (ALS).
R277-716-1. Definitions.

A. "Alternative Language Services (ALS)" means researched-based, instructional programs encompassing the total education process in all grades which meet the needs of children speaking a language other than English in the public school system. Programs shall be designed to enable students to achieve full competence in English and to meet school grade-promotion and graduation requirements as determined by the Board and school districts.

B. "Title VI of the Civil Rights Act of 1964" is federal legislation that states no person in the United States shall, on the basis of race, color, or national origin, be excluded from participation in the educational program offered by the school district.

C. "Lau v. Nichols" is a 1974 United States Supreme Court case in which the Court held that students who understand little or no English are denied equal opportunities when English is the sole medium of instruction and there are no systematic efforts to teach that language to non-English speaking children or language assistance to enable them to participate in the instructional program of the district.

D. "Students with bilingual needs" means students whose primary home language is other than English; and:

(1) who are monolingual speakers of a language other than English;

(2) who speak a language other than English and have a limited oral and written knowledge of English;

(3) who have equal oral knowledge of another language and English; but lack cognitive and academic English skills; or

(4) who speak predominantly English but have limited cognitive and academic skills.

E. "Primary or home language," as it relates to schools, means the language used by the parents, legal guardians or primary care providers of the student.

F. "Special alternative instructional," "transitional bilingual education," and "developmental bilingual education" are bilingual education models. Models, as applicable, shall be used in grades K-12, shall result in students satisfying grade promotion and graduation requirements, and shall provide for SEOPs for all students in the class:

(1) "Special alternative instructional program," such as an English as a second language (ESL) program, means instruction designed for students of limited-English proficiency. Such programs are not transitional or developmental education programs but are designed to meet the particular linguistic and instructional needs of the students enrolled. Such programs shall provide both structured English language instruction and special instructional services which allow the student to achieve competence in the English language.

(2) "Transitional bilingual education" means a model designed for a student of limited-English proficiency which provides structured English instruction to allow a student to achieve competency in the English language, using the student's primary language as a medium of instruction. Such instruction shall incorporate the cultural heritage of all students in American society.

(3) "Developmental bilingual education" means full-time instruction using both English and a second language. Such instruction is designed to help students achieve competence in English and a second language, while mastering subject matter skills. Such instruction shall, to the extent necessary, be in all courses of study. Classes in programs of developmental bilingual education shall be comprised of equal numbers of students whose primary language is English and limited-English proficient students whose primary language is the second language of instruction and study in the program.

G. "Board" means the Utah State Board of Education.

H. "LEP" means limited English proficient.

I. "USOE" means the Utah State Office of Education.

J. "SEOP" means a student education/occupation plan which is cooperatively developed by the student, the student's parents and designated school personnel. The plan is guided by general Core Curriculum requirements and individual student interests and goals.

K. "Core Curriculum" means minimum academic standards provided through courses as established by the Board which shall be completed by all students K-12 as a requisite for graduation from Utah's secondary schools.

L. "May 25, 1970 Memorandum" is a Memorandum issued by the former Department of Health, Education and Welfare to school districts with more than five percent national origin minority group children entitled "Identification of Discrimination and Denial of Services on the Basis of National Origin." The purpose of the May 25th Memorandum was to clarify Title VI requirements concerning the responsibility of school districts to provide equal education opportunity to

language minority students. In determining whether the recipient is operating a program for LEP students that meets Title VI requirements, OCR will consider whether:

(1) the program the recipient chooses is recognized as sound by experts in the field or is considered a legitimate experimental strategy;

(2) the program and practices used by the school system are reasonably calculated to implement effectively the educational theory adopted by the school; and

(3) the program succeeds, after a legitimate trial, in producing results indicating that students' language barriers are actually being overcome.

M. "OCR" means Office for Civil Rights. OCR has jurisdiction over the enforcement of Title VI of the Civil Rights Act of 1964, its implementing regulations and various other antidiscrimination statutes.

R277-716-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution, Article X, Section 3, which vests general control and supervision of public education in the Board; by Department of Education Title VI Regulation (34 C.F.R. Part 100) which prohibits practices of discrimination when based on race, color or national origin; 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) direct that school districts provide alternative language services to students;

(2) provide standards and criteria for those services and programs; and

(3) distribute funds to districts to offset costs in providing alternative language services to designated students.

R277-716-3. Classification, Identification and Assessment of Students.

A. School districts shall determine a student's primary language upon entrance in a district school. School districts shall request information identifying a student's national origin and primary language upon registration in a district school and shall keep such information in the student's permanent record file. Information obtained from the registration form shall be supplemented by additional assessments conducted by the school and approved by the USOE.

B. Districts shall classify LEP students, as necessary, using categories specified for students with ALS needs. Students shall be classified based on information gathered from assessments required in Subsection (3)(C). Such classification shall assist the USOE in determining and providing the level of funds necessary to assist districts in providing an equal educational opportunity to students with ALS education needs.

C. Language Evaluation:

(1) Appraisals of a student's language proficiency are to be made by personnel qualified in bilingual education, trained in English as a second language, or trained to administer tests that measure language proficiency.

(2) Such instruments shall be approved for appraisal of student language proficiency (speaking, listening, reading and writing) through the USOE Students at Risk Section.

D. Special education assessment tools shall not be used to assess English language proficiency.

E. Parents shall be notified and consulted about their children's placement in alternative language programs. The parent information letter shall be in the parents' primary language.

R277-716-4. Staffing.

A. A school district shall follow one of the patterns described below or another approved by the USOE for staffing its ALS education program:

(1) employ a certificated teacher with bilingual/ESL certification and bilingual or ESL endorsement or both;

(2) employ a certificated teacher and a bilingual aide who speaks the language of the students and has been trained in a USOE-approved program. This option may only be used for a period not to exceed two years beginning January, 1996; or

(3) employ a bilingual/bicultural college graduate who has demonstrated successful experience in educating LEP students and who is participating in a training program leading to teacher certification in bilingual education/ESL. This option may only be used for a period not to exceed two years beginning January, 1996.

B. By the school year 1999-2000, teachers who are assigned to work primarily with LEP students shall have certification or endorsement in Bilingual Education or English as a second language.

R277-716-5. Program Components, Funding and Review.

A. A school district shall write, implement and submit to the USOE an annual evaluation of its educational program for LEP students intended to help LEP students attain proficiency in English and move toward an equal educational opportunity. The district's program shall include all of the following:

(1) procedures which include:

(a) identifying students who need assistance;

(b) developing a program which, in the view of professional educators, has a reasonable chance for success;

(c) ensuring that needed staff, curricular materials, and facilities are in place and used properly;

(d) developing appropriate evaluative standards for measuring the progress of students including program exit criteria; and

(e) continuing program assessment and services as needed after completion of ALS education programs.

(2) a well defined instructional program which is based on research with on-going evaluation of English language proficiency as approved by the USOE. Examples of such programs are special alternative instruction (such as ESL), transitional bilingual education, and developmental bilingual education programs.

(3) delivery of the core content classes to the students in their primary languages as dictated by language assessment needs of students. The cultures of all students shall be infused into the Core Curriculum.

(4) documentation of the delivery of specific language development programs.

(5) curriculum for LEP students based upon assessment of students' educational needs; and

(6) service to LEP students who qualify for special

education. This service:

(a) shall be in compliance with Public Law 94-142;

(b) shall be provided with special education funds for students referred for evaluation as candidates for special education; and

(c) shall be provided by special education personnel with bilingual cultural backgrounds who are qualified to work with LEP students in assessment and instruction.

(7) other programs and services that satisfy the requirements of the May 25, 1970 Memorandum and that are consistent with Lau v. Nichols.

(8) The USOE shall provide ALS funding to school districts based on the number of students served in the district and based on the district's compliance with Subsections 5A(1) through (7).

B. The district program shall assess the student's cognitive academic skills in the language in which the student has the greatest academic proficiency.

C. Programs shall serve LEP students until their native cognitive academic skills in English are at a level comparable to their native English speaking peers as evidenced by the students' progress in Core Curriculum classes.

D. The USOE Students at Risk Section shall review school district ALS proposals and assist school districts to comply with federal standards.

E. Upon agreement with participating school districts, the USOE shall designate one participating school district to act as fiscal agent. That district shall receive adequate funding from the ALS legislative appropriation to provide general program coordination, teacher endorsement courses and program training for all school districts receiving ALS funding.

KEY: public education, alternative language services*
March 10, 1997 Art X Sec 3
Notice of Continuation January 14, 1998 53A-1-401(3)

R277. Education, Administration.
R277-718. Utah Career Teaching Scholarship Program.
R277-718-1. Definitions.

A. "Premier Scholarship" means a scholarship which includes $3,000, $1,000 per quarter for three quarters, in addition to tuition and fees.

B. "Certification requirements" means essential conditions which qualify an individual for a Utah teaching credential.

C. "Board" means the Utah State Board of Education.

R277-718-2. 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, Sections 53B-10-101 which permits the Board and State Board of Regents to establish criteria, policies, and procedures for administration of the Utah Career Teaching Scholarship and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify standards and procedures for administration of the scholarship program.

R277-718-3. Scholarships.

A. The State Superintendent of Public Instruction awards the number of scholarships available for allocation to graduating high school seniors. Alternate recipients are designated in the event that a primary recipient declines the scholarship before the next academic year begins at the college or university.

B. Scholarships awarded to graduating high school seniors are for a period of years corresponding to the length of the course the student elects to pursue, up to a maximum of 12 semesters. Except for Premier Scholarships, the scholarship is equal to tuition and fees of the institution.

C. Scholarship recipients must meet institutional requirements for admission and must declare their intention to complete the prescribed work of normal instruction for a degree, diploma, and teaching certificate. After completion of such work, they must teach in the schools of this state for a period of years equal to that for which the scholarship was received.

D. Scholarship recipients are required to either teach in Utah schools within two years after graduation and certification or to repay the amount of scholarship assistance received. Credit for teaching is counted on a year for year basis in satisfying this repayment obligation: one year teaching equals forgiveness of one year of scholarship assistance. Recipients who teach in small schools in remote areas of the state as designated by the State Board of Regents shall receive two years of repayment credit for each year of teaching.

E. Recipients who fail to complete Utah teacher certification requirements are required to repay all scholarship assistance received with interest, consistent with "Utah State Board of Regents Policies and Procedures," March 14, 1986, published by the Utah State Board of Regents. This publication is available from the Utah State Board of Regents Office and the Certification Section and School Law Section at the Utah State Office of Education.

R277-718-4. Award Procedures.

A. The total number of scholarships authorized by the State Legislature to be maintained in any given year is 365. The number of scholarships available for award to graduating seniors is provided by the Office of the State Board of Regents. The number is in the ratio of 200 to 165.

B. By January 31st of each year, the State Superintendent of Public Instruction announces the availability of Utah Career Teaching Scholarships to be awarded to qualified candidates who will be graduating from Utah high schools in the spring of that same year. The announcement and official application forms are sent to all school district superintendents and high school principals or counselors, or both. A news release regarding the scholarships is sent to daily and weekly newspapers and other news media.

C. The Utah State Office of Education surveys Utah school districts and college and university placement centers and reviews other information available on a national, regional, and state basis to determine teaching areas that are in short supply. It conveys its findings to school district officials for use in evaluating their candidates for the scholarship.

D. Completed applications and an evaluation of the applicant by the counselor, principal, district superintendent, or all of them, is forwarded to the State Superintendent before

March 16 of the application year. A list of applicants is included, arranged in descending order of total points awarded in relation to the established criteria.

E. By April 30, recipients of scholarships and alternates are notified by mail of the award of a scholarship or of their alternate status. A list of those students to whom scholarships have been awarded and of the alternates is forwarded to the Office of the State Board of Regents together with a copy of the application form received from each awardee and alternate.

F. Candidates who have been recommended for premier scholarships are notified and are advised as to the schedule for interviews for final selection. Premier scholarship recipients are notified by May 31.

G. If a student declines a scholarship that has been awarded, the scholarship is reallocated to the next alternate on the list up to December 31 of that same year. Any scholarships awarded through the Board that are vacated in excess of the number of alternates are reallocated to the Board before the ratio of 200 to 165 is applied to the total number of scholarships available for award for the following year.

KEY: student financial aid, career education, education
1987 Art X Sec 3
Notice of Continuation January 14, 1998 53A-1-401(3)
53B-10-101

R277. Education, Administration.
R277-721. Deadline for CACFP Sponsor Participation in Food Distribution Program.
R277-721-1. Definitions.

A. "CACFP" means Child and Adult Care Food Program.

B. "Board" means the Utah State Board of Education.

R277-721-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities and Section 53A-1-402(3) which permits the Board to administer funds made available through programs of the federal government.

B. The purpose of this rule is to specify deadlines for sponsor participation in the food distribution program.

R277-721-3. Deadlines.

A. Sponsors approved for participation in CACFP before June 1 shall have the opportunity to choose to receive USDA donated entitlement commodities or cash-in-lieu of entitlement commodities for the coming federal fiscal year.

B. New sponsors at new sites approved by CACFP participation after May 31 shall receive cash-in-lieu of entitlement commodities and are not eligible to receive entitlement commodities until the federal fiscal year following the first May 31 of participation.

C. New sponsors purchasing existing sites already receiving entitlement commodities and approved for CACFP participation after May 31 shall have the option of continuing to receive entitlement commodities or receiving cash-in-lieu of commodities for all sites under its sponsorship.

KEY: food aid programs
1987 Art X Sec 3
Notice of Continuation January 14, 1998 53A-1-401(3)
53A-1-402(3)

R277. Education, Administration.
R277-722. Withholding Payments and Commodities in the CACFP.
R277-722-1. Definitions.

A. "CACFP" means Child and Adult Care Food Program.

B. "Board" means the Utah State Board of Education.

C. "USOE" means the Utah State Office of Education.

R277-722-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities and Section 53A-1-402(3) which permits the Board to administer funds made available through programs of the federal government.

B. The purpose of this rule is to specify payment procedures required of delinquent CACFP participants.

R277-722-3. Payment Procedures.

CACFP participants who do not pay commodity billings or respond to audit and review citations and overclaims, or both, are subject to the following:

A. If no appeal has been submitted on an overclaim citation or billing, claims for reimbursement shall not be paid unless a corrective action plan or arrangement for repayment of the overclaim, approved by the USOE, is received in the USOE prior to the end of the next whole claiming period following notice of delinquency.

B. If commodity charges are not paid within 30 days of billing, subsequent claims for reimbursement shall not be paid and commodities shall not be allocated or delivered until payment is received.

C. If response, payment, or appeal is not received by the USOE within 30 days plus a preceding whole claiming period, with notice of the delinquency, participation in CACFP is suspended and no reimbursements or commodity deliveries shall occur until response is received and approved by the USOE.

D. Delinquency of 60 days plus a preceding whole claiming period, with notice of delinquency, is cause for the permanent denial of previously unpaid reimbursements and continued denial of commodity allocations and deliveries. Participation shall be reinstated only with full payment of overclaims and commodity billings and initiation of corrective actions approved by on-site inspection at the reasonable convenience of the USOE.

KEY: food aid programs
1987 Art X Sec 3

Notice of Continuation January 14, 1998 53A-1-401(3)
53A-1-402(3)

R277. Education, Administration.
R277-730. Alternative High School Curriculum.
R277-730-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Alternative high school" means a non-standard high school, other than a home school, for students with special needs, interests, or learning styles, which meets all of the following criteria:

(1) the local school has been officially designated as a high school by the local board of education;

(2) a principal or coordinator and staff are assigned to the school;

(3) extra costs are associated with the school such as counseling staff, library, and other supporting costs;

(4) students have access to an approved vocational education program;

(5) the school is primarily for youth in continuous education who have not graduated from high school but are working toward graduation. Its programs qualify students as candidates for graduation.

C. "Home study/drop-in program" means an education program in which a student independently completes assignments away from the school and comes to the school on a periodic basis to submit or discuss the assignments with a designated counselor or instructor.

R277-730-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-402(1) which directs the Board to adopt minimum standards for public schools, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify curriculum standards for alternative high schools.

R277-730-3. Curriculum and Graduation Requirements.

A. An alternative high school must provide instruction in the subjects which are required for student graduation.

B. A student education plan shall be developed, and reviewed at least annually, by each alternative high school student, the student's parent, and designated school personnel. The plan shall be guided by the general program of studies, graduation requirements, and individual student interests and goals. The plan shall identify an area of concentration in a cluster related to the student's post-secondary goal.

C.(1) Candidates for graduation must demonstrate mastery of the general core subjects and be formally assessed on mastery of the core courses during or at the conclusion of grades 10 and 12.

(2) If a student has a condition which precludes the successful demonstration of mastery, the student education plan team may modify the competency demonstration to accommodate the condition.

R277-730-4. Awarding Credit.

A. Units of credit in alternative high schools are awarded on the same basis as in regular high schools. Credit shall be awarded only once for a specific required course with the same content during the secondary school experience.

B. Credit may be earned by any of the following methods:

(1) satisfactory completion of a course that meets state course standards;

(2) demonstrated proficiency via preassessment;

(3) demonstrated mastery in approved courses completed outside of the school day or year;

(4) concurrent enrollment in approved post-secondary institutions;

(5) demonstrated mastery in approved correspondence or extension courses; and

(6) upon application, demonstrated mastery in special experimental programs.

C. Assessment of mastery is the responsibility of local boards of education.

D. A maximum of three units of home study/drop-in credit may be transferred to qualify for high school graduation. A minimum of nine hours of student/teacher interaction is required for each quarter unit of credit awarded for a home study/drop-in program.

E. Make-up credit offered through an alternative high school program must be approved by the high school from which the student intends to graduate. The course work prescribed must be on the same academic level as that in which the student is deficient. For example, general math credit will not substitute for algebra or geometry credit.

R277-730-5. Operation Procedures Related to Curriculum.

A. Home study/drop-in programs in alternative high schools must be approved by the Board or by the respective board of education if the school is operated by a district.

B. Alternative high school teachers must hold a Basic or Standard Teaching Certificate endorsed in one or more subjects required in the core curriculum approved by the Board. In addition, they must have completed not fewer than nine quarter hours of state approved college or in-service course work in each of the subject areas to which they are assigned.

C. Curriculum and teaching strategies shall be designed to meet the individual needs of the student. A written course description shall be available for all classes taught.

D. Students shall have access to a media center containing books, film strips, videos, tapes, and equipment.

E. The alternative high school must have an outreach program in place to contact enrolled students who are not attending the school.

KEY: alternative school, education
1987 Art X Sec 3
Notice of Continuation January 14, 1998 53A-1-402(1)
53A-1-401(3)

R277. Education, Administration.
R277-732. Community Education.

R277-732-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Community education" means a philosophical concept based upon a partnership between the community and education where each views the other as a valuable resource in developing the community, improving community living, and developing a common process toward the end of individualized education. It consists of two parts: public involvement in education decision making and the community school as a delivery system of educational services.

R277-732-2. 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 allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify standards governing community education programs.

R277-732-3. Program Standards.

A. Community education programs and funds shall support the following criteria:

(1) the public is involved in determining the role the schools shall play in solving individual and community problems through planning, solving problems, making recommendations, and evaluating roles;

(2) the public is involved in education decision making and sharing of responsibility and accountability at all appropriate levels;

(3) the community school, acting as a community center, is a delivery system of educational services for the community;

(4) educational services are designed to serve the needs of all segments of the community; and

(5) programs and services are offered at community schools or other convenient locations in cooperation and coordination with other organizations, agencies, and institutions which provide community services.

B. State funds may be used for any of the following:

(1) salaries;

(2) professional and technical services;

(3) insurance, communication, advertising, printing;

(4) travel;

(5) miscellaneous purchased services;

(6) food; and

(7) indirect costs--restricted.

C. The Board may develop forms, deadlines, or accounting and reporting procedures to administer this program.

KEY: community schools

1987	**Art X Sec 3**
Notice of Continuation January 14, 1998	**53A-1a-104**
	53A-1-401(3)

R307. Environmental Quality, Air Quality.
R307-1. Utah Air Conservation Rules.
R307-1-1. Foreword and Definitions.

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.

Definitions contained in R307-1-1 are applicable to all rules adopted by the Air Quality Board.

"Abrasive Blasting" means the operation of cleaning or preparing a surface by forcibly propelling a stream of abrasive material against the surface.

"Abrasive Blasting Equipment" means any equipment utilized in abrasive blasting operations.

"Abrasives" means any material used in abrasive blasting operations including but not limited to sand, slag, steel shot, garnet or walnut shells.

"Accumulator" means the reservoir of a condensing unit receiving the condensate from the condenser.

"Actual Area of Nonattainment" means an area which is shown by monitored data or modeling actually to exceed the National Ambient Air Quality Standards (Boundaries are established in the Utah State Implementation Plan).

"Actual Emissions" means the actual rate of emissions of a pollutant from a source 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 source 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 source'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 source are equivalent to the actual emissions of the source.

3. For any source which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the source on that date.

"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 in its "Threshold Limit Values for Chemical Substances and Physical Agents -Biological Exposure Indices, pages 13 - 38 (1996)."

"Adverse Impact on Visibility" means for purposes of subsection 3.11 of R307-1-3, visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitors visual experience of a mandatory Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairments, and how these factors correlate with (1) times of visitor use of the mandatory Class I area, and (2) the frequency and timing of natural conditions that reduce visibility.

"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 Dried Coating" means coatings which are dried by the use of air or a forced warm air at temperatures up to 90 degrees C (194 degrees F).

"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).

"Air Quality Related Values" means, as used in analyses under R307-1-3.1.3, Public Notice, those special attributes of a Class I area, assigned by a federal Land Manager, that are adversely affected by air quality.

"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 R307-1-3.1.8.

"Ambient Air" means the surrounding or outside air (Section 19-2-102(4)).

"Application Area" means the area where the coating is applied by spraying, dipping, or flow coating techniques.

"Appropriate Authority" means the governing body of any city, town or county.

"Asphalt or Asphalt Cement" means the dark brown to black cementitious material (solid, semisolid, or liquid in consistency) of which the main constituents are bitumens which occur naturally or as a residue of petroleum refining.

"Asphalt Concrete" means a waterproof and durable paving material composed of dried aggregate which is evenly coated with hot asphalt cement.

"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.

"Average Monthly Storage Temperature" means the average daily storage temperature measured over a period of one month.

"Basecoat" means a primary flat wood coating or coloring of panels and normally should completely hide substrate

characteristics.

"Baseline Area" means any intrastate area (and every part thereof) designated as attainment or unclassifiable under Section 107(d)(1)(D) or (E) of the federal Clean Air Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than 1 ug/m^3 (annual average) of the pollutant for which the minor source baseline date is established.

1. Area redesignations under section 107(d)(1) (D) or (E) of the federal Clean Air Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

(a) Establishes a minor source baseline date; or

(b) Is subject to 40 CFR 52.21 or subsection R307-1-3.6, and would be constructed in the same state as the state proposing the redesignation.

"Baseline Concentration" means that ambient concentration level which exists in the baseline area at the time of the applicable minor source baseline date.

"Baseline Date":

1. Major source baseline date means:

(a) In the case of particulate matter and sulfur dioxide, January 6, 1975, and

(b) In the case of nitrogen dioxide, February 8, 1988.

2. Minor source baseline date means the earliest date after the trigger date on which the first complete application under 40 CFR 52.21 or subsection R307-1-3.6 is submitted by a major source or major modification subject to the requirements of 40 CFR 52.21 or subsection R307-1-3.6. The minor source baseline is the date after which emissions from all new or modified sources consume or expand increment, including emissions from major and minor sources as well as any or all general commercial, residential, industrial, and other growth. The trigger date is:

(a) In the case of particulate matter and sulfur dioxide, August 7, 1977, and

(b) In the case of nitrogen dioxide, February 8, 1988.

"Batch Open Top Vapor Degreasing" means the batch process of cleaning and removing grease and soils from metal surfaces by condensing hot solvent vapor on the colder metal parts.

"Best Available Control Technology (BACT)" means an emission limitation and/or other controls to include design, equipment, work practice, operation standard or combination thereof, based on the maximum degree or reduction of each pollutant subject to regulation under the Clean Air Act and/or the Utah Air Conservation Act emitted from or which results from any emitting installation, which the Air Quality Board, on a case-by-case basis taking into account energy, environmental and economic impacts and other costs, determines is achievable for such installation through application of production processes and available methods, systems and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall applications of BACT result in emissions of any pollutants which will exceed the emissions allowed by Section 111 or 112 of the Clean Air Act.

"Board" means Air Quality Board. See Section 19-2-102(6)(a).

"Bottom Filling" means the filling of a tank through an inlet at or near the bottom of the tank designed to have the opening covered by the liquid after the pipe normally used to withdraw liquid can no longer withdraw any liquid.

"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 the UACR.

"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.

"Capture System" means the equipment (including hoods, ducts, fans, etc.) used to contain, capture, or transport a pollutant to a control device.

"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 in its "Threshold Limit Values for Chemical Substances and Physical Agents -Biological Exposure Indices (1996), pages 13 - 38."

"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 in its "Threshold Limit Values for Chemical Substances and Physical Agents -Biological Exposure Indices, pages 13 - 38 (1996)."

"Class II Hard Board Paneling Finish" means finishes which meet the specifications of voluntary product standards PS-9-73 as approved by the American National Standards Institute.

"Clean Air Act" means Federal Clean Air Act as amended in 1990.

"Clear Coat" means a coating which lacks color and opacity.

"Clearing Index" means an indicator of the predicted rate of clearance of ground level pollutants from a given area. This number is calculated by the National Weather Service from daily measurements of temperature lapse rates and wind speeds from ground level to 10,000 feet. The State has been divided into three separate air quality areas for purposes of the clearing index system:

1. Area 1 includes those valleys below 6500 feet above sea level and west of the Wasatch Mountain Range and extending south through the Wasatch and Aquarius Plateaus to the Arizona border. Included are the Salt Lake, Utah, Skull and

Escalante Valleys and valleys of the Sevier River Drainage.

2. Area 2 includes those valleys below 6500 feet above sea level and east of the Wasatch Mountain Range. Included are Cache Valley, the Uintah Basin, Castle Valley and valleys of the Green, Colorado, and San Juan Rivers.

3. Area 3 includes all valleys and areas above 6500 feet above sea level.

"Coating" means a protective, functional, or decorative film applied in a thin layer to a surface. This term often applies to paints such as lacquers or enamels, but is also used to refer to films applied to paper, plastics, or foil.

"Coating Application System" means all operations and equipment which applies, conveys, and dries a surface coating, including, but not limited to, spray booths, flow coaters, flash off areas, air dryers and ovens.

"Cold Cleaning" means the batch process of cleaning and removing soils from metal surfaces by spraying, brushing, flushing or immersing while maintaining the solvent below its boiling point.

"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.

"Condensor" means any device which removes condensable vapors by a reduction in the temperature of the captured gases.

"Confined Blasting" means any abrasive blasting conducted in an enclosure which significantly restricts air contaminants from being emitted to the ambient atmosphere, including but not limited to shrouds, tanks, drydocks, buildings and structures.

"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.

"Control System" means any number of control devices, including condensors, which are designed and operated to reduce the quantity of VOC emitted to the atmosphere.

"Conveyorized Degreasing" means the continuous process of cleaning and removing greases and soils from metal surfaces by using either cold or vaporized solvents.

"Curtain Coating" means the application of a coating material to a wood substrate by means of a free-falling film of coating.

"Cutback Asphalt" means any asphalt which has been liquified by blending with petroleum solvents (diluents) or, in the case of some slow cure asphalts (road oils), which have been produced directly from the distillation of petroleum.

"Department" means Utah State Department of Environmental Quality. See Section 19-1-103(1).

"Dispersion Technique" means any technique which attempts to affect the concentration of a pollutant in the ambient air by:

1. Using that portion of a stack which exceeds good engineering practice stack height;

2. Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

3. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. The techniques described in this definition do not include:

A. The reheating of a gas stream following the use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

B. The merging of exhaust gas streams where:

(1) The source owner or operator demonstrates that the facility was originally designed and constructed with such merged gas streams;

(2) After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the emission limitation for the pollutant affected by such change in operation; or

(3) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the Air Quality Board shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the Air Quality Board shall deny credit for the effects of such merging in calculating the allowable emissions for the source;

C. Smoke management in agricultural or silvicultural prescribed burning programs;

D. Episodic restrictions on residential wood-burning and open burning; or

E. Techniques under 1.49.3 which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

"Dry Cleaning Facility" means a facility engaged in the cleaning of fabrics in an essentially nonaqueous solvent by means of one or more washes in solvent, extraction of excess solvent by spinning, drying, and tumbling in an airstream. The facility includes but is not limited to any washer, dryer, filter and purification systems, waste disposal systems, holding tanks, pumps, and attendant piping and valves.

"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), Clean Air Act).

"Emulsified Asphalt" means asphalt emulsions produced by combining asphalt with water that contains an emulsifying agent.

"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 (including all sections within R307-1), any permit requirements established pursuant to 40 CFR 52.21 or section 3.1 of R307-1-3.

"EPA" means Environmental Protection Agency.

"Excessive Concentration" is defined for the purpose of determining good engineering practice stack height under 1.71.3 and means:

1. for sources seeking credit for stack height exceeding that established under 1.71.2, a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to the prevention of significant deterioration program (subsection 3.6 of R307-1-3), an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under subsection 3.8 of R307-1-3 shall be prescribed by the state approval order or the federal new source performance standard that is applicable to the source category, whichever is more stringent, unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the Executive Secretary, an alternative emission rate shall be established in consultation with the source owner or operator. The allowable emission rate to be used in making demonstrations under subsection 3.8 of R307-1-3 for sources for which no federal new source performance standard or state approval order has been issued shall be established by the Executive Secretary in consultation with the source owner or operator.

2. for sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under 1.71.2 either,

A. a maximum ground-level concentration due in whole or part to downwash, wakes or eddy affects as provided in 1.55.1, except that the emission rate specified by any applicable State implementation plan (or, in the absence of such a limit, the actual emission rate) shall be used, or

B. the actual presence of a local nuisance caused by the existing stack, as determined by the authority administering the State implementation plan.

3. for sources seeking credit after January 12, 1983, for a stack height determined under 1.71.2 where the Executive Secretary requires the use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984, based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970, based on the aerodynamic influence of structures not adequately represented by the equations in 1.71.2, a maximum ground-level concentration due in whole or in part to downwash, wakes, or eddy effects that is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

"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.

"Exterior Single Coat" means the same as topcoat but is applied directly to the metal substrate omitting the primer application.

"Extreme Performance Coatings" means coatings designed for harsh exposure or extreme environmental conditions.

"Fabric Coating" means the coating or saturation of a textile substrate with a knife, roll or rotogravure coater to impart characteristics that are not initially present, such as strength, stability, water or acid repellency, or appearance.

"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.

"Filler" means a type of coating used to fill pores, voids, and cracks in wood to provide a smooth surface. It can also be used to accentuate the grain of natural hardwood veneers.

"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.

"Flat Wood Coating" means the surface coating of any flat wood products.

"Flexographic Printing" means the application of works, designs, and pictures to substrate by means of a roll printing technique in which the pattern to be applied is raised above the printing roll and the image carrier is made of rubber or other elastomeric materials.

"Freeboard Ratio" means the freeboard height divided by the width of the degreaser.

"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.

"Good Engineering Practice (GEP) Stack Height" means the greater of:

1. Sixty-five (65) meters, measured from the ground-level elevation at the base of the stack;

2. Where H_g=good engineering practice stack height measured from the ground-level elevation at the base of the stack; H=height of nearby structure(s) measured from the ground-level elevation at the base of the stack; L=lesser dimension (height or projected width) of nearby structure(s), and provided that the Executive Secretary may require the use of a field study or fluid model to verify GEP stack height for the source:

A. for stacks in existence on January 12, 1979, and for which the owner or operator had obtained all required air quality permits or approvals, $H_g = 2.5L$ provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation;

B. for all other stacks, $H_g = H+1.5L$; or

3. The height demonstrated by a fluid model or a field study approved by the Executive secretary, which ensures that the emissions from the stack do not result in excessive concentrations of air contaminants as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

"Groove Coat" means a flat wood coating which covers grooves cut into the panel to assure that the grooves are compatible with the final surface color.

"Hardwood Plywood" means plywood whose surface layer is a veneer of hardwood.

"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.

"Heavy Fuel Oil" means a petroleum product or similar material with a boiling range higher than that of diesel fuel.

"Hot Well" means the reservoir of a condensing unit receiving the warm condensate consisting primarily of water from the condenser.

"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.

"Hydroblasting" means any abrasive blasting using high pressure liquid as the propelling force.

"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.

"Indirect Source" means a building, structure or installation which attracts or may attract mobile source activity that results in emission of a pollutant for which there is a national standard.

"Ink" means a flat wood coating used to put a decorative design on printed panels. It can also produce special appearances on natural hardwood plywood.

"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.

"Interior Single Coat" means a single film of coating applied to internal parts of large appliances that are not normally visible to the user.

"Knife Coating" means the application of a coating material to a substrate by means of drawing the substrate beneath a blade that spreads the coating evenly over the width of the substrate.

"Large Appliances" means doors, cases, lids, panels, and interior support parts of residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dishwashers, trash compactors, air conditioners, and other similar products.

"Lowest Achievable Emission Rate (LAER)", as defined in Section 173(2), Clean Air Act, means for any source, that rate of emissions which reflects:

1. The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or

2. The most stringent emission limitation which is achieved in practice by such class or category of source,

whichever is more stringent.

In no event shall the application of this term permit a proposed new source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.

"Low Organic Solvent Coating" means coatings which contain less organic solvents than the conventional coatings used by industry. Low organic solvent coatings include water-borne, higher-solids, electrodeposition, and powder coatings.

"LPG" means liquified petroleum gas such as propane or butane.

"Magnet Wire Coating" means the process of applying coating of electrical insulating varnish or enamel to aluminum or copper wire for use in electrical machinery.

"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.

"Major Source" means, to the extent provided by the federal Clean Air Act as applicable to these rules:

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 this section 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.

"Major Source" means, for the purposes of Subsection R307-1-3.6:

1. any of the following sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Clean Air Act: Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons

of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, fossil fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

2. any other source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant; or

3. a source which does not otherwise qualify as a major source as defined in this paragraph, but which is physically changed, which change itself would constitute a major source.

4. a source which is major for volatile organic compounds is major for ozone.

5. The fugitive emissions and fugitive dust of a stationary source shall not be included in determining for any of the purposes of this section 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 ore 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.

"Metal Furniture Coating" means the surface coating of any furniture made of metal or any metal part which will be assembled with other metal, wood fabric, plastic, or glass parts to form a furniture piece.

"Modification" means any planned change in a source which results in a potential increase of emission.

"Multiple Nozzles" means a group of two or more nozzles being used for abrasive cleaning of the same surface in such close proximity that their separate plumes are indistinguishable.

"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).

"Natural Finish Hardwood Plywood Panels" means panels whose original grain pattern is enhanced by essentially transparent finishes frequently supplemented by fillers and toners.

"Nearby" as used in subpart 2 of the definition "Good Engineering Practice (GEP) Stack Height" is defined for a specific structure or terrain feature and

1. for the purpose of applying the formulae provided in subpart 1 of the definition "Good Engineering Practice (GEP) Stack Height", means that distance up to five times the lesser of the height or the width dimension of a structure, but not to be greater than 1/2 mile, and

2. for conducting demonstrations using subpart 3 of the definition "Good Engineering Practice (GEP) Stack Height", means not greater than 1/2 mile, except that the portion of terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height of the feature, not to exceed 2 miles if such a feature achieves a height 1/2 mile from the stack that is at least 40 percent of the GEP stack height determined by the formulae provided in subpart 2.B of the definition "Good Engineering Practice (GEP) Stack Height" of this part or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base from the stack.

"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:

(1) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(2) It is enforceable at and after the time that actual construction on the particular change begins; and

(3) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(4) It has not been relied on in issuing any permit under Section R307-1-3.1 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 for any pollutant, "an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator, EPA to be reliable) to exceed any National Ambient Air Quality Standard for such pollutant" (Section 171, Clean Air Act). Such term includes any area designated as nonattainment under Section 107, Clean Air Act.

"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.

"Open Top Vapor Degreaser" means the batch process of cleaning and removing soils from metal surfaces by condensing low solvent vapor on the colder metal parts.

"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.

"Packaging Rotogravure Printing" means rotogravure printing upon paper, paper board, metal foil, plastic film, and other substrates, which are, in subsequent operations, formed into packaging products and labels.

"Paper Coating" means uniform distribution of coatings put on paper and pressure sensitive tapes regardless of substrate. Related web coating processes on plastic film and decorative coatings on metal foil are included in this definition. Paper coating covers saturation operations as well as coating operations. (Saturation means dipping the web into a bath).

"Particle Board" means a manufactured board made of individual particles which have been coated with a binder and formed into flat sheets by pressure.

"PM10 Nonattainment Area" means Salt Lake County, Utah County, or Ogden City.

"PM10 Particulate Matter" 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. It includes sulfur dioxide and nitrogen oxides.

"Part 70 Source" means any source subject to the permitting requirements of R307-15.

"Patch Mix" means a mixture of an asphalt binder and aggregate in which cutback or emulsified asphalts are used either as sprayed liquid or as a binder.

"Peak Ozone Season" means June 1 through August 31, inclusive.

"Penetrating Prime Coat" means an application of low-viscosity liquid asphalt to an absorbent surface in order to prepare it for paving with asphaltic concrete.

"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)).

"Petroleum Refinery Complex" means any source or installation engaged in producing gasoline, aromatics, kerosene, distillate fuel oils, residual fuel oils, lubricants, asphalt, or other products through distillation of petroleum or through redistillation, cracking, rearrangement, or reforming of unfinished petroleum derivatives.

"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.

"Pressure Head Coating" means the application of a coating material to a wood substrate by means of a pressure head coater where coating material is metered into a pressure head and forced through a calibrated slit between two knives.

"Prime Coat" means the first film of coating applied in a two-coat operation.

"Primer" means a flat wood coating used to protect the wood from moisture and to provide a good surface for further coating applications.

"Printed Interior Panels" means panels whose grain or natural surface is obscured by fillers or basecoats upon which a simulated grain or decorative pattern is printed.

"Process Drain" means any drain used in a refinery complex on equipment which processes, transfers a volatile

organic compound or mixture of volatile organic compounds.

"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.

"Process Unit Turnaround" means the procedure of shutting a refinery unit down after a run to do necessary maintenance and repair work and putting the unit back in operation.

"Production Equipment Exhaust System" means a device for collecting and directing out of the work area VOC fugitive emissions from reactor openings, centrifuge openings, and other vessel openings for the purpose of protecting employees from excessive VOC exposure.

"Publication of Rotogravure Printing" means rotogravure printing upon paper which is subsequently formed into books, magazines, catalogues, brochures, directories, newspaper supplements, and other types of printed materials.

"Reactor" means any vat or vessel, which may be jacketed to permit temperature control, designed to contain chemical reactions.

"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.

"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 20 cubic feet, a minimum burn rate less than 5 kg/hr as determined by test procedures prescribed in 40 CFR 60.534, and weigh less than 800 kg. 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.

"Roll Coating" means the application of a coating material to a substrate by means of hard rubber or steel rolls.

"Roll Printing" means the application of words, designs and pictures to a substrate usually by means of a series of hard rubber or steel rolls each with only partial coverage.

"Rotogravure Coating" means the application of a uniform layer of material across the entire width of the web to substrate by means of a roll coating technique in which the pattern to be applied is etched on the coating roll. The coating material is picked up in these recessed areas and is transferred to the substrate.

"Rotogravure Printing" means the application of words, designs, and pictures to a substrate by means of a roll printing technique which involves a recessed image area in the form of cells.

"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.

"Sealer" means a type of coating used to seal off substances in the wood which may affect subsequent finishes as well as protect the wood from moisture.

"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.

"Separation Operation" means any process that separates a mixture of compounds and solvents into two or more components. Specific mechanisms include extraction, centrifugation, filtration, and crystallization.

"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 Particulate matter: 15 tpy
Particulate matter: 25 tpy
Ozone: 40 tpy of volatile organic compounds
Lead: 0.6 tpy

2. For purposes of Section R307-1-3.6 it shall also additionally mean for:

a. A rate of emissions that would equal or exceed any of the following rates:

Asbestos: 0.007 tpy
Beryllium: 0.0004 tpy
Mercury: 0.1 tpy
Vinyl Chloride: 1 tpy
Fluorides: 3 tpy
Sulfuric acid mist: 7 tpy
Hydrogen Sulfide: 10 tpy
Total reduced sulfur (including H2S): 10 tpy
Reduced sulfur compounds (including H2S): 10 tpy

b. In reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the Clean Air Act not listed in 1 and 2 above, any emission rate.

c. Notwithstanding the rates listed in 1 and 2 above, any emissions rate or any net emissions increase associated with a

major source or major modification, which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than 1 ug/cubic meter, (24-hour average).

"Single Coat" means a single film of coating applied directly to the metal substrate omitting the primer application.

"Sole Source of Heat " means the residential solid fuel burning device is the only available source of heat for the entire residence, except for small portable heaters.

"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.

"Solvent Metal Cleaning" means the process of cleaning soils from metal surfaces by cold cleaning, open top vapor degreasers, or conveyorized degreasing.

"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).

"Specialty Printing Operations" means all gravure and flexographic operations which print a design or image, excluding publication gravure and packaging gravure printing. Specialty printing operations include, among other things, printing on paper cups and plates, patterned gift wrap, wallpaper, and floor coverings.

"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.

"Stack in Existence" means that the owner or operator had

1. begun, or caused to begin, a continuous program of physical on-site construction of the stack, or

2. entered into binding agreements or contractual obligations, which could not be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed in a reasonable time.

"Stain" means a nonprotective flat wood coating which colors the wood surface without obscuring the grain.

"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.

"Submerged Fill Pipe" means any fill pipe with a discharge opening which is entirely submerged when the liquid level is 6 inches above the bottom of the tank and the pipe normally used to withdraw liquid from the tank can no longer withdraw any liquid.

"Synthesized Pharmaceutical Manufacturing" means the manufacture of pharmaceutical products by chemical synthesis.

"Temporary" means not more than 180 calendar days.

"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 - Biological Exposure Indices (1996), pages 13 -38."

"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 - Biological Exposure Indices (1996), pages 13 -38."

"Tile Board" means paneling that has a colored waterproof surface coating.

"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.

"Unconfined Blasting" means any abrasive blasting which is not confined blasting as defined above.

"Vacuum Producing System" means any reciprocating, rotary, or centrifugal blower or compressor, or any jet ejector or device that takes suction from a pressure below atmospheric and discharges against atmospheric pressure.

"Vertically Restricted Emissions Release" means the release of an air contaminant through a stack or opening whose flow is directed in a downward or horizontal direction due to the alignment of the opening or a physical obstruction placed beyond the opening, or at a height which is less than 1.3 times the height of an adjacent building or structure, as measured from ground level.

"Vertically Unrestricted Emissions Release" means the release of an air contaminant through a stack or opening whose flow is directed upward without any physical obstruction placed beyond the opening, and at a height which is at least 1.3 times the height of an adjacent building or structure, as measured from ground level.

"Vinyl Coating" means applying a decorative or protective top coat, or printing on vinyl coated fabric or vinyl sheets.

"Volatile Organic Compound (VOC)" as defined in 40 CFR Subsection 51.100(s)(1), in effect on September 24, 1997,and published at 62 Fed. Reg. 164 (August 25, 1997) 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.

"Waxy, Heavy Pour Crude Oil" means a crude oil with a

pour point of 50 degrees F or higher as determined by the American Society for Testing and Materials Standard D97-66, "Test for pourpoint of petroleum oils."

"Wet Abrasive Blasting" means any abrasive blasting using compressed air as the propelling force and sufficient water to minimize the plume.

"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.

R307-1-2. General Requirements.

2.1 Air Pollution Prohibited. Emission of air contaminants in sufficient quantities to cause air pollution as defined in subsection 1.11 of R307-1-1 is prohibited. The State statute provides for penalties up to $50,000/day for violation of State statutes, regulations, rules or standards (See Section 19-2-115 for further details).

2.2 Periodic Reports of Emissions and Availability of Information. The owner or operator of any stationary air-contaminant source in Utah shall furnish to the Board the periodic reports required under Section 19-2-104(1)(c) and any other information as the Board may deem necessary to determine whether the source is in compliance with Utah and Federal regulations and standards. The information thus obtained will be correlated with applicable emission standards or limitations and will be available to the public during normal business hours at the Division of Air Quality.

2.3 Variances Authorized

2.3.1 Variance from these regulations may be granted by the Board as provided by law (See Section 19-2-113) unless prohibited by the Clean Air Act:

A. to permit operation of an air pollution source for the time period involved in installing or constructing air pollution control equipment in accordance with a compliance schedule negotiated by the Executive Secretary and approved by the Board.

B. to permit operation of an air pollution source where there is no practicable means known or available for adequate prevention, abatement or control of the air pollutants involved. Such a variance shall be only until the necessary means for prevention, abatement or control becomes known and available, subject to the use of substitute or alternate measures the Board may prescribe.

C. to permit operation of an air pollution source where the control measures, because of their extent or cost, must be spread over a considerable period of time.

2.3.2 Variance requests, as set forth in Section 19-2-113, may be submitted by the owner or operator who is in control of any plant, building, structure, establishment, process or equipment.

2.4 General Burning.

As provided in Section 19-2-114, the provisions of R307-1-2.4.1 through R307-1-2.4.5 below are not applicable to:

(1) burning incident to horticultural or agricultural operations of:

(a) prunings from trees, bushes, and plants; or

(b) dead or diseased trees, bushes, and plants, including stubble;

(2) burning of weed growth along ditch banks incident to clearing these ditches for irrigation purposes;

(3) controlled heating of orchards or other crops to lessen the chances of their being frozen so long as the emissions from this heating do not violate minimum standards set by the board; and

(4) the controlled burning of not more than two structures per year by an organized and operating fire department for the purpose of training fire service personnel when the United States Weather Service clearing index is above 500.

See also Section 11-7-1(2)(a).

2.4.1 Community Waste Disposal. No open burning shall be done at sites used for disposal of community trash, garbage and other wastes except as authorized through a variance or as authorized for a specific period of time by the Board on the basis of justifiable circumstances reviewed and weighed in terms of pollution effects and other relevant considerations at an appropriate hearing following written application.

2.4.2 General Prohibitions. No person shall burn any trash, garbage or other wastes, or shall conduct any salvage operation by open burning except in conformity with the provisions of Subsections R307-1-2.4.3 and R307-1-2.4.4.

2.4.3 Permissible Burning - Without Permit. When not prohibited by other laws or by other officials having jurisdiction and provided that a nuisance as defined in Section 76-10-803 is not created, the following types of open burning are permissible without the necessity of securing a permit:

A. in devices for the primary purpose of preparing food such as outdoor grills and fireplaces;

B. campfires and fires used solely for recreational purposes where such fires are under control of a responsible person;

C. in indoor fireplaces and residential solid fuel burning devices except as provided in Subsection R307-17-3 of these regulations;

D. properly operated industrial flares for combustion of flammable gases; and

E. burning, on the premises, of combustible household wastes generated by occupants of dwellings of four family units or less in those areas only where no public or duly licensed disposal service is available.

2.4.4 Permissible Burning - With Permit. Open burning is authorized by the issuance of a permit as specified in R307-1-2.4.4.B when not prohibited by other laws or other officials having jurisdiction, and when a nuisance as defined in Section 76-10-803 is not created.

A. Individual permits for the types of burning listed in R307-1-2.4.4.B may be issued by an authorized local authority under the "clearing index" system approved and coordinated by the Department of Environmental Quality.

B. Types of burning for which a permit may be granted are:

(1) open burning of tree cuttings and slash in forest areas where the cuttings accrue from pulping, lumbering, and similar operations, but excluding waste from sawmill operations such as sawdust and scrap lumber;

(2) open burning of trees and brush within railroad rights-of-way provided that dirt is removed from stumps before burning, and that tires, oil more dense than #2 fuel oil or other

materials which can cause severe air pollution are not used to start fires or keep fires burning;

(3) open burning of solid or liquid fuels or structures for removal of hazards or eyesores;

(4) open burning, in remote areas, of highly explosive or other hazardous materials, for which there is no other known practical method of disposal;

(5) open burning of clippings, bushes, plants and prunings from trees incident to property clean-up activities provided that the following conditions have been met:

(a) in any area of the state, the local county fire marshall has established a 30 day period between March 30 and May 30 for such burning to occur and notified the executive secretary of the open burning period prior to the commencement of the 30 day period, or, in areas which are located outside of Salt Lake, Davis, Weber, and Utah Counties, the local county fire marshall has established, if allowed by the state forester under Section 65A-8-9, a 30 day period between September 15 and October 30 for such burning to occur and has notified the executive secretary of the opening burning period prior to the commencement of the 30 day period;

(b) such burning occurs during the period established by the local county fire marshall;

(c) materials to be burned are thoroughly dry;

(d) no trash, rubbish, tires, or oil are used to start fires or included in the material to be burned.

C. The Board may grant a permit for types of open burning not specified in R307-1-2.4.4.B on written application if the Board finds that the burning is not inconsistent with the State Implementation Plan.

2.4.5 Special Conditions. Open burning for special purposes, or under unusual or emergency circumstances, may be approved by the executive secretary.

2.5 Confidentiality of Information

Any person submitting information pursuant to these regulations may request that such information be treated as a trade secret or on a confidential basis, in which case the executive secretary and Board shall so treat such information. If no claim is made at the time of submission, the executive secretary may make the information available to the public without further notice. Information required to be disclosed to the public under State or Federal law may not be requested to be kept confidential. Justification supporting claims of confidentiality shall be provided at the time of submission on the information. Each page claimed "confidential" shall be marked "confidential business information" by the applicant and the confidential information on each page shall be clearly specified. Claims of confidentiality for the name and address of applicants for an approval order will be denied. Confidential information or any other information or report received by the executive secretary or Board shall be available to EPA upon request and the person who submitted the information shall be notified simultaneously of its release to EPA.

2.5.1 The following proceedings and actions are designated to be conducted either formally or informally as required by Section 63-46b-4:

A. Notices of Intent and Approval Orders shall be processed informally using the procedures identified in Section R307-1-3. Appeals of denials of or conditions in an approval order shall be conducted formally.

B. Issuance of Notices of Violations and Orders are exempt under Section 63-46b-1(2)(k). Appeals of Notices of Violation and Orders shall be processed as formal proceedings.

C. Requests for variances shall be processed informally using the procedures in Section 19-2-113 and Subsection R307-1-2.3.

D. Qualification for Tank Vapor Tightness Testing shall be conducted informally using the procedures identified in Section R307-3-4.

E. Certification of Asbestos Contractors shall be conducted informally using the procedures identified in Section R307-1-8.

F. Any other request or approvals for experiments, testing, control plans, etc., shall be conducted informally using the procedures identified in R307-1.

2.5.2 At any time before a final order is issued, the Board or appointed hearing officer may convert proceedings which are designated to be informal to formal, and proceedings which are designated as formal to informal if conversion is in the public interest and rights of all parties are not unfairly prejudiced.

2.5.3 Rules for conducting formal proceedings shall be as provided in Section 63-46b-3 and in Sections 63-46b-6 through 63-46b-13. In addition to the procedures referenced in Subsection R307-1-2.5.1 above, the procedures in Sections 63-46b-3 and 63-46b-5 apply to informal proceedings.

2.5.4 Declaratory Orders. In accordance with the provisions of Section 63-46b-21, any person may file a request for a declaratory order. The request shall be titled a petition for declaratory order and shall specifically identify the issues requested to be the subject of the order. Requests for declaratory order, if set for adjudicative hearing, will be processed informally using the procedures identified in Sections 63-46b-3 and 63-46b-5 unless converted to a formal proceeding under Subsection R307-1-2.5.2 above. No declaratory orders will be issued in the circumstances described in Subsection 63-46b-21(3)(a). Intervention rights and other procedures governing declaratory orders are outlined in Section 63-46b-21.

R307-1-3. Control of Installations.

3.1 Notice of Intent and Approval Order

3.1.1 Notice of Intent Required.

A. Except for the exemptions listed herein, any person intending to construct a new installation which will or might reasonably be expected to become a source or an indirect source of air pollution or to make modifications or relocate an existing installation which will or might reasonably be expected to increase the amount or change the effect of, or the character of, air contaminants discharged, so that such installation may be expected to become a source or indirect source of air pollution, or any person intending to install a control apparatus, or other equipment intended to control emission of air contaminants from a stationary source, shall submit to the executive secretary a notice of intent and receive an approval order prior to initiation of construction, modification or relocation. The notice of intent shall include the information described in R307-1-3.1.6 to determine whether the proposed construction, installation, modification, relocation or establishment will be in accord with applicable requirements of these rules. Within 30

days after receipt of a notice of intent, or any additional information necessary to the review, the executive secretary shall advise the applicant of any deficiency in the notice of intent or the information submitted. The executive secretary shall transmit to the Administrator, EPA, a copy of each notice of intent for each major source or major modification and provide notice to the Administrator, EPA, of every action related to the consideration of such permit.

B. Stationary sources that were in existence prior to November 29, 1969, that have not made any modifications or relocations since that date are not required to submit a notice of intent or to have an approval order; however, these sources are subject to all other applicable requirements of Title R307 and actions taken by the executive secretary and the Board pursuant to existing statutory authorities.

3.1.2 Within 90 days of receipt of a complete application including all the information described in R307-1-3.1.6, the executive secretary shall either issue an order prohibiting the proposed construction, installation, modification, relocation or establishment if it is deemed that any part of it is inadequate to meet the applicable requirements of Title R307, or issue an order permitting the proposed construction, installation, modification, relocation, or establishment pursuant to the requirements of R307-1-3.1.4 and R307-1-3.1.8. If more time is needed to review the proposal, it shall not exceed three 30-day extensions.

3.1.3 Public Notice.

A. Issuing the Notice. Prior to issuing an approval or disapproval order, the executive secretary shall advertise intent to approve or disapprove in a newspaper of general circulation in the locality of the proposed construction, installation, modification, relocation or establishment. A copy of the notice of intent to approve or disapprove shall be sent to the applicant, the Administrator, EPA, and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: any other state or local air pollution control agencies; the chief executives of the city and county where the source would be located; any comprehensive regional land use planning agency; and any state, Federal Land Manager, or Indian Governing body whose lands may be affected by emissions from the source or modification. Any expected consumption of the maximum allowable increases as stated in R307-1-3.6 and proposed emission limitations, emission amounts, and any operating limitations shall be included in the notice. The executive secretary shall consider any analysis performed by a Federal Land Manager and provided to the executive secretary within the public comment period. If the executive secretary concurs with a demonstration by the Federal Land Manager that the emissions from the proposed source or modification would have an adverse impact on the air quality related values (including visibility) in any Federal Class I area, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases, the executive secretary shall not issue an approval order for the source or modification.

B. Opportunity for Review and Comment.

(1) At least one location will be provided where the information submitted by the owner or operator, the executive secretary's analyses of the notice of intent proposal, and the proposed approval order conditions will be available for public inspection.

(2) Public Comment Period.

(a) A 10-day public comment period shall be required before an approval order is issued for a new source or for an existing source proposing to modify or relocate, if the source, modification, or relocation is not:

(i) subject to the requirements of R307-1-3.6, Prevention of Significant Deterioration of Air Quality (PSD);

(ii) subject to the requirements of R307-15, Operating Permit Requirements;

(iii) a synthetic minor source in accordance with R307-15-4(6);

(iv) located in a nonattainment area or a maintenance area for any pollutant; or

(v) subject to any standard or requirement of 42 U.S.C. 7411 or 7412.

(b) A request to extend the length of the comment period, up to 30 days, may be submitted anytime within 10 days of the date a notice is published in a newspaper.

(c) Those sources not subject to the 10-day public comment period are subject to the requirement in R307-1-3.1.3.B(2)(d) below.

(d) For any notice of intent proposal not subject to R307-1-3.1.3.B(2)(a), a 30-day public comment period is required before an approval order is issued or denied.

(e) A request for a hearing on the executive secretary's proposed approval or disapproval order may be submitted anytime within 10 days or 15 days of the date of a notice in a newspaper under provisions of the appropriate rule, R307-1-3.1.3.B(2)(a)or(d). The hearing shall be held in the area of the proposed construction, installation, modification, relocation or establishment. Any comments or statements received shall be considered before an order is issued or denied.

(f) The public comment and hearing procedure shall not be required when an order is issued for the purpose of extending the time required by the executive secretary to review plans and specifications.

3.1.4 Whenever the executive secretary determines that the information submitted under provisions of R307-1-3.1.6, with such revisions as may be required, are in accord with applicable requirements, the executive secretary shall issue an order permitting the proposed construction, installation, modification, relocation or establishment, with the further stipulation that all required facilities be adequately and properly maintained. Receipt of an approval order does not relieve any owner or operator of the responsibility to comply with the provisions of Title R307 or the State Implementation Plan. To accommodate staged construction of a large source, the executive secretary may issue an order authorizing construction of an initial stage prior to receipt of detailed plans for the entire proposal provided that, through a review of general plans, engineering reports and other information the proposal is determined feasible by the executive secretary under the intent of Title R307. Subsequent detailed plans will then be processed as prescribed in this paragraph. For staged construction projects the previous determination under R307-1- 3.1.8 shall be reviewed and modified as appropriate at the earliest reasonable time prior to

commencement of construction of each independent phase of the proposed source or modification.

3.1.5 Approval orders issued by the executive secretary in accordance with the provisions of R307-1- 3.1 shall be reviewed eighteen months after the date of issuance to determine the status of construction, installation, modification, relocation or establishment. If a continuous program of construction, installation, modification, relocation or establishment is not proceeding, the executive secretary may revoke the approval order.

3.1.6 The following information, where applicable, shall be submitted with the notice of intent:

A. A description of the nature of the processes involved; the nature, procedures for handling and quantities of raw materials; the type and quantity of fuels employed; and the nature and quantity of finished product.

B. Expected composition and physical characteristics of effluent stream both before and after treatment by any control apparatus, including emission rates, volume, temperature, air contaminant types, and concentration of air contaminants.

C. Size, type and performance characteristics of any control apparatus.

D. Location and elevation of the emission point and other factors relating to dispersion and diffusion of the air contaminant in relation to nearby structures and window openings, and other information necessary to appraise the possible effects of the effluent.

E. The location of planned sampling points and the tests of the completed installation to be made by the owner or operator when necessary to ascertain compliance.

F. The typical operating schedule.

G. A schedule for construction.

H. Any plans, specifications and related information which are in final form at the time of submission of notice of intent.

I. Any other information necessary to determine if the proposed source or modification will be in compliance with Title R307.

3.1.7 Exemptions and Special Provisions.

A. Small Source Exemption - De minimis Emissions.

(1) A new or existing stationary source is exempt from the notice of intent and approval order requirements of R307-1-3.1 if the following conditions are met:

(a) it is not regulated by any standard or requirement of 42 U.S.C. 7411 or 7412;

(b) its potential to emit does not make it a stationary major source or require emission offset provisions as required by R307-1-3.3.3 for a new or modified source;

(c) its actual emissions are less than 5 tons per year per air contaminant of any of the following air contaminants: sulfur dioxide (SO_2), carbon monoxide (CO), nitrogen oxides (NO_x), particulate matter (PM_{10}), ozone (O_3), or volatile organic compounds (VOCs);

(d) its actual emissions are less than 500 pounds per year of any hazardous air pollutant and less than 2000 pounds per year of any combination of hazardous air pollutants;

(e) its actual emissions are less than 500 pounds per year of any air contaminant not listed in R307-1-3.1.7.A(1)(c) or (d) and less than 2000 pounds per year of any combination of air contaminants not listed in R307-1-3.1.7.A(1)(c) or (d); and

(f) for purposes of determining applicability of R307-1-3.1.7.A, other air contaminants that are drawn from the environment through equipment in intake air and then are released back to the environment without chemical change, as well as carbon dioxide (CO_2), nitrogen (N_2), oxygen (O_2), argon (Ar), neon (Ne), helium (He), krypton (Kr), xenon (Xe) should not be included in emission calculations.

(2) Small Source Exemption - Registration Required in Nonattainment and Maintenance Areas. The owner or operator of a stationary source located in a nonattainment area or a maintenance area for the air contaminants, including ozone precursors, that is claiming an exemption under R307-1-3.1.7.A shall submit to the executive secretary a written registration notice. An existing source shall submit this registration notice no later than March 15, 1997. A new source shall submit the registration notice prior to commencing construction. The notice shall include the following minimum information:

(a) identifying information including company name and address, location of source, telephone number, and name of plant site manager or point of contact;

(b) a description of the nature of the processes involved, equipment, anticipated quantities of materials used, the type and quantity of fuel employed and nature and quantity of the finished product;

(c) identification of expected emissions;

(d) estimated annual emission rates;

(e) any control apparatus used; and

(f) typical operating schedule.

(3) The owner or operator of a temporary source that is claiming exemption under R307-1-3.1.7.A must still comply with the conditions of R307-1-3.1.9.

B. Flexibility Changes.

(1) A change to an existing stationary source is exempt from the notice of intent and approval order requirements of R307-1-3.1 if the source is covered by an approval order and the change satisfies the following conditions:

(a) the change is not regulated by any standard or requirement of 42 U.S.C. 7411 or 7412,

(b) the increases in allowable emissions from the change since the issuance of the current approval order for the source are less than:

(i) 5 tons per year per air contaminant of any of the following air contaminants: sulfur dioxide (SO2), carbon monoxide (CO), nitrogen oxides (NO_x), particulate matter (PM_{10}), ozone (O_3), or volatile organic compounds (VOCs);

(ii) 500 pounds per year of any hazardous air pollutant and 2000 pounds per year of any combination of hazardous air pollutants; and

(iii) 500 pounds per year of any air contaminant not listed in R307-1-3.1.7.B(1)(b)(i) or (ii) and 2000 pounds per year of any combination of air contaminants not listed in R307-1-3.1.7.B(1)(b)(i) or (ii);

(c) for purposes of determining applicability of R307-1-3.1.7.B, other air contaminants that are drawn from the environment through equipment in intake air and then are released back to the enviroment without chemical change, as well as carbon dioxide (CO_2), nitrogen (N_2), oxygen (O_2), argon (Ar), neon (Ne), helium (He), krypton (Kr), xenon (Xe) should not be included in emission calculations;

(d) the increase of allowable emissions from the change is accompanied by an equivalent or greater decrease of allowable emissions of the same air contaminants within the source at the time of the change, so long as the emissions decrease is enforceable in an approval order;

(e) the net emissions increase at the source, as defined in R307-1-1, as a result of the change shall not constitute a major modification, as defined in R307-1-1; and

(f) The owner or operator claiming an exemption pursuant to R307-1-3.1.7.B submits to the executive secretary a written notice prior to the change. The notice shall include the information specified in R307-1-3.1.7.A(2)(a) through (f) and a description of where the owner or operator will reduce allowable emissions at least equal to any increase in emissions from the change.

(2) The approval order shall reflect emission increases and decreases of emitting units at the source resulting from the change.

(3) A source must go through the full Notice of Intent and Approval Order requirements of R307-1-3.1 to change any limitation which a source is relying on, either to avoid being classified as a major source, or to avoid having a change in emissions be considered a major modification.

(4) No comment period under R307-1-3.1.3 is required for this approval order change and update.

C. Other Exemptions. Sources listed in R307-1-3.1.7.C(1) through (6) are exempt from the notice of intent and approval order requirements of R307-1-3.1.

(1) Fuel-burning equipment in which combustion takes place at no greater pressure than one inch of mercury above ambient pressure with a rated capacity of less than five million BTU per hour using no other fuel than natural gas or LPG or other mixed gas that meets the standards of gas distributed by a utility in accordance with the rules of the Public Service Commission of the State of Utah is exempt, unless there are emissions other than combustion products.

(2) Comfort heating equipment such as boilers, water heaters, air heaters and steam generators with a rated capacity of less than one million BTU per hour if fueled only by fuel oil numbers 1 - 6 is exempt.

(3) Emergency heating equipment, using coal or wood for fuel, with a rated capacity less than 50,000 BTU per hour is exempt.

(4) Exhaust systems for controlling steam and heat that do not contain combustion products are exempt.

(5) New parking areas of less than 600 vehicles capacity or modified parking areas increasing capacity by less than 350 vehicles are exempt.

(6) Emissions of 1,1,1-trichloroethane, trichlorofluoromethane, dichlorodifluoromethane, chlorodifluoromethane, trifluoromethane, 1,1,2-trichloro-1,2,2-trifluoroethane, 1,2-dichloro-1,1,2,2-tetrafluoroethane, methane, ethane, and chloropentafluoroethane are exempt. However, the owner or operator of a source emitting 10 tons per year or more of any of these compounds must submit a notice of intent to the executive secretary prior to construction of the source and an annual report of emissions thereafter.

D. Exemptions from the Notice of Intent and Approval Order provisions of R307-1-3.1 for Replacement-in-Kind Equipment.

(1) Applicability. The owner or operator of a stationary source of air contaminants who modifies any process or replaces any control apparatus that is covered by an existing approval order, a previous approval order that has been superseded by an operating permit, or a requirement contained in a State Implementation Plan is exempt from the notice of intent and approval order requirements of R307-1-3.1, when the replacement-in-kind equipment meets all of the following conditions:

(a) potential to emit of the process equipment is the same or lower;

(b) the number of emission points or emitting units is the same or lower;

(c) no additional types of air contaminants are emitted as a result of the replacement;

(d) the control apparatus or process equipment is essentially the same as that being replaced and is not regulated by any standard or requirement of 42 U.S.C. 7411 or 7412;

(e) the replacement of the control apparatus or process equipment does not violate any other provision of Title R307.

(2) Replacement-in-Kind Procedures.

(a) In lieu of filing a notice of intent under R307-1-3.1, an owner or operator of a stationary source proposing to replace control apparatus or process equipment by in-kind equipment shall submit a written notification to the executive secretary for approval prior to initiation of replacement. The notification shall contain a description of the replacement-in-kind, to include the control capability of any control apparatus and a demonstration that the conditions of R307-1-3.1.7.D(1) are met.

(b) If the replacement-in-kind meets the conditions of R307-1-3.1.7.D(1), the executive secretary will update the appropriate approval order and notify the owner or operator. No public comment period under R307-1-3.1.3 is required.

E. Exemptions from Notice of Intent and Approval Order provisions of R307-1-3.1 for Reduction or Elimination of Air Contaminants.

(1) Applicability. The owner or operator of a stationary source of air contaminants covered by an existing approval order or a State Implementation Plan that reduces or eliminates air contaminants by changing, substituting, or eliminating process raw materials or process equipment, or uses a more efficient process design, is exempt from the notice of intent and approval order requirements of R307-1-3.1 when all the following are met:

(a) there is a permanent reduction of air contaminants per year that is enforceable by an approval order;

(b) there are no new air contaminants emitted as a result of the changes; and

(c) the changes do not violate any provision of Title R307 rules.

(2) Procedures for the Reduction or Elimination of Air Contaminants Exemption. In lieu of filing a notice of intent under R307-1-3.1, an owner or operator of a stationary source making changes as described in R307-1-3.1.7.E(1) shall submit a written description of the changes to the executive secretary no later than 60 days after the changes are made. The approval order will be updated by the executive secretary to reflect the reductions and other changes; no comment period under R307-

1-3.1.3 is required.

F. Any owner or operator of a source submitting an inventory as required in R307-1-3.5 shall include in that inventory an estimate of all emissions from the above exempted activities, using appropriate emission factors and estimating techniques.

G. Any control apparatus installed on a source that is exempted under R307-1-3.1.7 shall be adequately and properly maintained. The owner or operator of any new or existing emission unit that is exempted under R307-1-3.1.7 is required to comply with all other applicable rules in Title R307.

H. If the executive secretary has reason to believe, after completion of an appropriate analysis and evaluation in consultation with the source owner or operator, that the emissions from a source described in R307-1-3.1.7.A, B C, D, and E above are not meeting any specified approval order or State Implementation Plan limitation, or create an adverse impact to the environment, or would be injurious to human health or welfare, then the notice of intent and approval order provisions of R307-1-3.1 will apply.

3.1.8 The executive secretary shall issue an approval order if it is determined through plan review that the following conditions have been met:

A. The degree of pollution control for emissions, to include fugitive emissions and fugitive dust, is at least best available control technology except as otherwise provided in Title R307.

B. The proposed installation will be in accord with applicable requirements of: Utah Title R307; National Standards of Performance for New Stationary Sources; National Primary and Secondary Ambient Air Quality Standards; National Emission Standards for Hazardous Air Pollutants; new source review criteria; maximum allowable increase and maximum allowable concentration requirements for Prevention of Significant Deterioration; the State Implementation Plan for the area, if the area is classified as a nonattainment or maintenance area; and new source requirements for nonattainment areas under the Federal Clean Air Act.

C. The executive secretary shall issue an approval order under R307-1-3.6.5 for a major source or major modification which consumes more than 50% of the increments in R307-1-3.6.3 only after receiving the approval of the Board.

3.1.9 The owner or operator of a source previously approved under R307-1-3.1 or in a State Implementation Plan may temporarily relocate and operate the source at any site for up to 180 working days in any calendar year not to exceed 365 consecutive days, starting from the initial relocation date. The executive secretary shall evaluate the expected emissions impact at the site and compliance with applicable Title R307 rules as the bases for determining if approval for temporary relocation may be granted. Records of the working days at each site, consecutive days at each site, and actual production rate shall be sent to the executive secretary at the end of each 180 calendar days. These records shall also be kept on site by the owner or operator for the entire project, and be made available for review to the executive secretary as requested. To issue a written approval or disapproval, the executive secretary is not required to submit the temporary relocation proposal for public comment.

3.1.10 The owner or operator of a major new source or major modification to be located in a nonattainment or maintenance area or which would impact a nonattainment or maintenance area must, in addition to the requirements in R307-1-3.1, submit with the notice of intent an adequate analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification. The executive secretary shall review the analysis. The analysis and the executive secretary's comments shall be subject to public comment as required by R307-1-3.1.3. The preceding shall also apply in Salt Lake and Davis Counties for new major sources or modifications which are considered major for precursors of ozone, including volatile organic compounds and nitrogen oxides.

3.1.11 At a time that a source or modification becomes a major source or major modification because of a relaxation of any enforceable limitation which was established after August 7, 1980, on the capacity of a source or modification otherwise to emit a pollutant, such as a restriction on the hours of operation, then the preconstruction requirements shall apply to the source as though construction had not yet commenced on the source or modification.

3.1.12 Low Oxides of Nitrogen Burner Technology.

A. All sources excluding non-commercial residential dwellings shall install oxides of nitrogen control/low oxides of nitrogen burners or controls resulting from application of an equivalent technology, as determined by the Executive Secretary, whenever existing fuel combustion burners are replaced, unless such replacement is not physically practical or cost effective. The request for an exemption shall be presented to the Executive Secretary for review and approval.

B. Contingency Requirement for Ozone Nonattainment Areas and Salt Lake and Davis Counties. If the Contingency Requirements for nitrogen oxides are triggered as outlined in Section IX.D.2.h(2) of the State Implementation Plan, all existing sources excluding non-commercial residential dwellings shall install either low oxides of nitrogen burner technology as described in R307-1-3.1.12(a), unless such requirement is not physically practical or cost effective, or controls resulting from application of an equivalent technology, both of which shall be determined by the executive secretary. All sources required to install new controls under R307-1-3.1.12.B shall submit, within two months after the trigger date, either a schedule for installing the equipment or a request for an exemption. The required equipment shall be operational as soon as practicable or within a reasonable time agreed upon by the source and the executive secretary.

3.2 Nonattainment Area Requirements And PM10 Nonattainment Area Requirements - Existing Sources.

3.2.1 Particulate Emission Limitations And Operating Parameters (TSP).

A. Existing sources located in or affecting areas of nonattainment shall use reasonably available control measures to the extent necessary to insure the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). The emission limitations specified in this paragraph constitute, in the judgment of the Board, reasonably available control measures

necessary to insure attainment and maintenance of the NAAQS as of the date of promulgation of these regulations. Specific limitations for installations within a source listed below which are not specified will be set by order of the Board. Specific limitations for installations within a source listed below may be adjusted by order of the Board provided the adjustment does not adversely affect achieving the applicable NAAQS.

B. The owner or operator of any source listed in this paragraph shall not allow exceedance of the emission limitation or violation of any other listed requirement (See schedule for compliance listed in paragraph 3.2.2). The requirements listed for the sources in Weber County apply unless modified by an approval order or compliance order issued after February 16, 1982.

TABLE 1

IDENTIFICATION OF SOURCE (SOURCES 25 TONS/YEAR OR GREATER ACTUAL EMISSIONS)	EMISSION LIMITATIONS
WEBER COUNTY (TSP)	
1. Farmers Grain Coop unloading/loading/ cleaning and grinding stacks/vents	20% opacity each stack/vent
2. Fife Rock Products Asphalt Plant (Hot mix dryer)	0.040 gr/dscf, 20% opacity (stack and fugitive emissions)
3. Interpace Corporation - 4/2/81 Grinding and screening	20% opacity (vents and fugitive emissions)
4. Parsons Asphalt Plant	0.040 gr/dscf, 20% opacity (stack and fugitive emissions)
5. Pillsbury Co. Loading, milling, unloading	20% opacity each vent
6. Teledyne Incinerator	0.080 gr/dscf, 20% opacity
7. Gibbons and Reed Asphalt Plant - 4/2/81	0.030 gr/dscf, 20% opacity

3.2.2 Compliance Schedule (TSP). The owner or operator of an existing installation which is a source of a pollutant in a nonattainment area for the pollutant, or which has significant impact (Based on the increment levels in subparagraph 3.3.2.A) upon a nonattainment area, is required to achieve the established emission limitation or other requirements established by these regulations as expeditiously as practicable but no later than December 31, 1982, or such later date as may be specified by Congress or EPA under the Clean Air Act. Within 180 days after the effective date of a regulation establishing a standard of pollutant control pursuant to an emission limitation under paragraph 3.2.1 or paragraph 4.1.1 of R307-1-4, the owner or operator of an existing installation not meeting these requirements must submit a notice of intent as outlined in subsection 3.1 together with a compliance schedule. The compliance schedule shall contain proposed interim measures to control and identify the degree of emission reduction to be achieved by each such interim measure of control.

3.2.3 Compliance Testing (TSP)

A. Testing Methodology. Except as otherwise provided in this paragraph 3.2.3, compliance testing for gravimetric emission limitations for particulate shall be pursuant to EPA reference Method 5 or EPA reference Method 17 where appropriate and approved by the Executive Secretary. Where EPA reference Method 5 is used for compliance testing, determination of compliance with gravimetric emission limitations shall be made through the use of front half catch. The Executive Secretary may require that Method 5 full train analysis be conducted and that back half data also be submitted but only for information purposes. Such information shall not be used to determine compliance with gravimetric emission limitations. EPA reference Method 1 shall be used to select the sampling site and number of traverse sampling points. Where necessary for determination of stack gas velocities, EPA reference Method 2 shall be used. Where necessary for determination of dry molecular weight, EPA reference Method 3 shall be used. Where necessary for determination of moisture content in stack gases EPA reference Method 4 shall be used. All EPA reference methods referred to in this paragraph 3.2.3 are those found in 40 CFR Part 60 Appendix A.

Except as provided below in these regulations any alternate test methods or sampling methods may be used with the approval of the Executive Secretary, provided, however, that if such reference tests or sampling methods are used to test compliance with federal law they may be used only if approved, in writing, by the Administrator of EPA or his representative.

B. Special Sampling and Compliance Testing Requirements for Fossil-Fuel Fired Power Plants. Method 5 or EPA reference Method 17 where appropriate (only when stack temperatures do not exceed 320 degrees F) and approved by the Executive Secretary shall be run for fossil-fuel fired power plants as modified by 40 CFR, Part 60, subpart D or Da whichever is applicable. Method 9 shall be run for opacity.

C. Exceptions for Special Sampling and Testing Conditions for Performance for Incinerators. Method 5 shall be run for incinerators as modified by 40 CFR, Part 60, Subpart E.

D. Special Conditions for Sampling for Portland Cement Plants. Method 5 or EPA Reference Method 17 where appropriate and approved by the Executive Secretary shall be run for Portland Cement Plants. If compliance is tested by use of Method 5, Method 5 shall be modified as provided in 40 CFR, Part 60, Subpart F.

3.2.4 Particulate Emission Limitations and Operating Parameters (PM10)

All sources with emissions of 25 tons per year or more (combinations of sulfur dioxide, oxides of nitrogen, and PM10) in areas located in or affecting PM10 Nonattainment Areas in Salt Lake and Utah Counties shall meet the emission limitations and operating parameters contained in Section IX, Part H, of the Utah State Implementation Plan (SIP). Existing sources located in or affecting PM10 Nonattainment Areas shall use reasonably available control measures to the extent necessary to insure the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). The emission limitations specified in the SIP constitute, in the judgment of the Board, reasonably available control measures necessary to insure attainment and maintenance of the NAAQS not later than December 31, 1994. Specific limitations for installations within a source listed in the SIP which are not specified will be set by order of the Board. Specific limitations for installations within a source may be adjusted by order of the Board provided the adjustment does not adversely affect achieving the applicable NAAQS.

3.2.5 Compliance Testing (PM10). Compliance testing for the PM10, sulfur dioxide, and oxides of nitrogen emission limitations shall be done in accordance with Section IX, Part H of the SIP. PM10 compliance shall be determined from the results of EPA test method 201 or 201a. A backhalf analysis shall be performed for each PM10 compliance test in accordance with a method approved by the Executive Secretary for inventory purposes. For sources not requiring changes to their process or air pollution control devices to achieve compliance with the emission limitations contained in these regulations, compliance testing shall be scheduled with the Executive Secretary within three months after promulgation of this Section 3.2.5. For Utah County sources listed in Section IX, Part H.1 of the SIP which need to make major changes to comply, a construction/installation schedule for demonstration of compliance with limitations contained in the SIP, shall be submitted by the owner/operator by February 15, 1991. Those sources located in Salt Lake and Davis County listed in Section IX, Part H.2 of the SIP which need to make major changes to comply shall submit to the Executive Secretary a construction/installation schedule for demonstration of compliance with limitations contained in the SIP within three months after the effective date of this Section 3.2.5. for approval. Those sources making major changes of process equipment or air pollution control equipment shall submit a notice in accordance with Section 3.1, UACR, for the purpose of meeting the emissions limitations contained in Section IX, Part H of the SIP and receive approval from the Executive Secretary. The schedule indicated above shall result in demonstration of compliance with the limitations by December 31, 1992, unless an alternate schedule has been approved by the Executive Secretary. The alternate schedule shall be approved by the Executive Secretary if the owner/operator demonstrates that the schedule or implementation of control measures is as expeditious as practicable, but extends beyond December 31, 1992. Any submittal requesting an alternate schedule shall be done in accordance with the requirements of the Federal Clean Air Act, and shall be consistent with the SIP demonstration of attainment by December 31, 1994.

3.2.6 Compliance Schedule (PM10). The owner or operator of an existing installation listed in the SIP is required to achieve the emission limitation or other requirements established by the SIP as expeditiously as practicable, but no later than December 31, 1992. For those sources granted an alternate schedule in accordance with Section 3.2.5, compliance with the limitations shall be demonstrated as provided in the approved schedule. Until the time a source is required to demonstrate compliance with the limitations in the SIP, the source shall comply with the applicable provisions of the existing TSP limitations and operating parameters listed in the Utah Air Conservation Regulations dated April 1, 1990, or existing approval orders.

3.2.7 Salting and Sanding.

A. Any person who applies salt, crushed slag, or sand to roads in Salt Lake, Davis or Utah Counties shall maintain records of the material applied. For salt, the records shall include the quantity applied, the percent by weight of insoluble solids in the salt, and the percentage of the material that is sodium chloride. For sand or crushed slag the records shall include the quantity applied and the percent by weight of fine material which passes the number 200 sieve in a standard gradation analysis. All records shall be maintained for a period of at least two years, and the records shall be made available to the Executive Secretary or his designated representative upon request.

B. After October 1, 1993, any salt applied to roads in Salt Lake, Davis, or Utah Counties must be at least 92% sodium chloride (NaCl).

C. After October 1, 1993, any person who applies crushed slag, sand, or salt that is less than 92% sodium chloride to roads in Salt Lake, Davis, or Utah Counties must either:

1. demonstrate to the Board that the material applied has no more PM10 emissions than salt which is at least 92% sodium chloride; or

2. vacuum sweep every arterial roadway (principle and minor) to which the material was applied within three days of the end of the storm for which the application was made. For the purpose of this rule, the term "arterial roadway" shall have the meaning outlined in U.S. DOT Federal Highway Administration Publication No. FHWA-ED-90-006, Revised March 1989, "Highway Functional Classification: Concepts, Criteria, and Procedures" as interpreted by Utah Department of Transportation and shown in the following maps: Salt Lake Urbanized Area, Provo-Orem Urbanized Area, and Ogden Urbanized Area (1992 or later).

3. In the interest of public safety, any person who applies crushed slag and/or sand to arterial roadways because salt alone would not ensure safe driving conditions due to steepness of grade, extreme weather, or other reasons, may petition the Board for a variance from the sweeping requirements in R307-1-3.2.7.C.2. Specifically excluded from these sweeping requirements are all canyon roads and the portion of Interstate 15 near Point of the Mountain.

3.3 Requirements for Nonattainment Areas and Salt Lake City and Ogden Maintenance Areas for Carbon Monoxide - New and Modified Sources.

3.3.1 Emission Limitations. Any source constructed in an actual area of nonattainment, or in the Salt Lake City and Ogden maintenance areas for carbon monoxide, or in an area which will impact on an actual area of nonattainment or on the Salt Lake City and Ogden maintenance areas for carbon monoxide must meet all applicable emission requirements of R307-1, Utah Air Conservation Regulations, and R307-2, Utah State Implementation Plan. A proposed source which is not a major source may be approved without further analysis provided such source meets all such applicable emission limitations and offset requirements listed in paragraph 3.3.3. The emission limitations shall be stated as a condition of the approval order.

3.3.2 Review of Major Sources of Air Quality Impact. Every major new source or major modification must be reviewed by the Executive Secretary to determine if a source will cause or contribute to a violation of the NAAQS. The determination of whether a source will cause or contribute to a violation of the NAAQS will be made by the Executive Secretary as of the new source's projected start-up date. He will make an analysis of the proposed new source's operation data using the best information and analytical techniques available.

A. If the owner or operator of a source proposes to locate

the source outside an area of nonattainment where the source will not cause an increase greater than the following increments in actual areas of nonattainment or in the Salt Lake City and Ogden maintenance areas for carbon monoxide and the source otherwise meets the requirements of these regulations, such source shall be approved.

TABLE 2

MAXIMUM ALLOWABLE MICROGRAM/CUBIC METER IMPACT
BY AVERAGING TIME

Pollutant	Annual	24-Hr	8-Hr	3-Hr	1-Hr
SULFUR DIOXIDE	1.0	5		25	
PM10	1.0	3			
CO			500		2000

B. If the Executive Secretary finds that the emissions from a proposed source would cause a new violation of the NAAQS but would not contribute to an existing violation, the Executive Secretary shall approve the proposed source if and only if:

(1) the new source is required to meet a more stringent emission limitation, sufficient to avoid a new violation of the NAAQS and

(2) the new source has acquired sufficient offset to avoid a new violation of the NAAQS and

(3) the new emission limitations for the proposed source and for any affected existing sources are enforceable.

C. If the Executive Secretary finds that the emissions from a proposed source in a nonattainment area would contribute to an existing violation of a national ambient air quality standard at the time of the source's proposed start-up date, approval shall be granted if and only if:

(1) the new source meets an emission limitation which is the Lowest Achievable Emission Rate (LAER) for such source and

(2) the applicant has certified that all existing major sources in the State, owned or controlled by the owner or operator (or by any entity controlling, controlled by or under common control with such owner or operator) of the proposed source, are in compliance with all applicable Utah Air Conservation Regulations and Utah Implementation Plan requirements or are in compliance with an approved schedule and timetable for compliance under the Utah Implementation Plan, the Utah regulations, or an enforcement order, and that the source is complying with all requirements and limitations as expeditiously as practicable.

(3) emission offsets to the extent provided in paragraph 3.3.3 are sufficient such that there will be reasonable further progress toward attainment of the applicable NAAQS.

(4) the emission offsets provide a positive net air quality benefit in the affected area of nonattainment.

(5) there is an approved implementation plan in effect for the pollutant to be emitted by the proposed source.

D. A source which is locating outside a nonattainment area or the Salt Lake City and Ogden maintenance areas for carbon monoxide and which causes the significant increments in subparagraph 3.3.2.A to be exceeded in the nonattainment or maintenance area is subject to the requirements of subparagraph 3.3.2.C.

3.3.3 Offset Requirements.

A. General Requirements.

(1) Emission offsets must be obtained from the same source or other sources in the same nonattainment area except that the owner or operator of a source may obtain emission offsets in another nonattainment area if:

(a) the other area has an equal or higher nonattainment classification than the area in which the source is located; and

(b) emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located or which is impacted by the source.

(2) Any emission offsets shall be enforceable by the time a new or modified source commences construction, and, by the time a new or modified source commences operation, any emission offsets shall be in effect and enforceable and shall assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the area.

(3) Emission reductions otherwise required by the federal Clean Air Act or the Utah Air Conservation Rules and State Implementation Plan shall not be creditable as emission reductions for purposes of any offset requirement. Incidental emission reductions which are not otherwise required by federal or state law shall be creditable as emission reductions if such emission reductions meet the requirements of paragraphs 3.3.3.A(1) and (2).

(4) Sources shall be allowed to offset, by alternative or innovative means, emission increases from rocket engine and motor firing, and cleaning related to such firing, at an existing or modified major source that tests rocket engines or motors under the conditions outlined in Section 173(e)(1) through Section 173(e)(4) of the federal Clean Air Act as amended in 1990.

B. PM10 Nonattainment Areas.

New sources which have a potential to emit, or modified sources which would produce an emission increase equal to or exceeding the tonnage total of combined PM10, sulfur dioxide, and oxides of nitrogen listed below which are located in or impact a PM10 Nonattainment Area as defined in R307-1-3.3.3.B(1) below, shall obtain an enforceable offset as defined in R307-1-3.3.3.B(2) and R307-1-3.3.3.B(3).

(1) For the purpose of determining whether the owner or operator which proposes to locate a source outside a nonattainment area is required to obtain offsets, the maximum allowable impact on any nonattainment area is 1.0 microgram/cubic meter for a one-year averaging period and 3.0 micrograms/cubic meter for a 24-hour averaging period for any combination of PM10, sulfur dioxide and nitrogen dioxide.

(2) For a total of 50 tons/year or greater, an offset of 1.2:1 of the emission increase is required.

(3) For a total of 25 tons/year but less than 50 tons/year, an offset of 1:1 of the emission increase is required.

For the offset determinations, PM10, sulfur dioxide, and oxides of nitrogen shall be considered on an equal basis. In areas which are nonattainment for both PM10 and ozone, the most stringent emission offset ratio for oxides of nitrogen required by R307-1-3 shall apply.

C. Ozone Nonattainment Areas and Davis and Salt Lake

Counties. New sources and modifications to existing sources as defined and outlined in Section 182 of the Clean Air Act shall meet the offset requirements and conditions listed in that section for the applicable classified area and for the identified pollutants. As outlined in Section 182 of the federal Clean Air Act, for moderate areas, the emission offset ratio must be at least 1.15:1.

(1) Ozone Maintenance Plan; Salt Lake and Davis Counties. In the event that the contingency measures described in Section IX, Part D.2.h.(3) and of the State Implementation Plan are triggered, the offset requirement in R307-1-3.3.3.C(2) shall apply to emissions of both volatile organic compounds and oxides of nitrogen.

(2) The emission offset ratio must be at least 1.2:1, and offset must be obtained for the same pollutant for which the source or modification has been deemed "major". For the purposes of R307-1-3.3.3.C(2), the term "major" shall mean: any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 50 tons per year of either volatile organic compounds or oxides of nitrogen; or a modification to an existing source if the net emissions increase in either volatile organic compounds or oxides of nitrogen is at least 25 tons per year.

3.3.4 Construction in Stages. When a source is constructed or modified in stages which individually do not have the potential to emit more than 100 tons per year, the allowable emission from all such stages shall be added together in determining the applicability of subsection 3.3 of these regulations.

3.3.5 Baseline for Determining Credit for Emission and Air Quality Offsets. The baseline to be used for determination of credit for emission and air quality offsets will be the emission limitations and/or other requirements in the State Implementation Plan (SIP), revised in accordance with the Clean Air Act or subsequent revisions thereto in effect at the time the application to construct or modify a source is filed.

3.3.6 Banking of Emission Offset Credit. Banking of emission offset credit will be permitted to the fullest extent allowed by applicable Federal Law as identified in EPA's document "Emissions Trading Policy Statement" published in the Federal Register on December 4, 1986, and 40 CFR 51.165(a)(3)(ii)(c) as amended on June 28, 1989, and 40 CFR 51.165, Appendix S. To preserve banked emission reductions, the Executive Secretary must identify them in either the Utah SIP or an order issued pursuant to Subsection 3.1 of these rules and shall provide a registry to identify the person, private entity or governmental authority that has the right to use or allocate the banked emission reductions, and to record any transfers of, or liens on these rights.

3.4 Emission Testing

3.4.1 Emission testing will be required of all sources with established emission limitations at least once every five years. For sources located in nonattainment areas, emission testing will be required at least once every five years or more frequently as specified in Section IX, Part H of the Utah State Implementation Plan (SIP) adopted by the Air Quality Board, or by the Executive Secretary if he has reason to believe that the source is not meeting its emission limitation. Sources approved in accordance with subsection 3.1 will be tested within six months of start-up. Sources for which emission limitations are established pursuant to paragraph 3.2.1 which do not require modification will be tested within one year of the effective date of these regulations. In addition, if the Executive Secretary has reason to believe that an applicable emission limitation is being exceeded (i.e., through visible emission observations and monitoring data, etc.) he may require the owner or operator to perform such emission testing as is necessary to determine actual compliance status. The Board may grant exceptions to the mandatory testing requirements of this paragraph 3.4.1 which are not inconsistent with the purposes of these regulations.

3.4.2 At least 30 days prior to conducting any emission testing required under any part of these regulations, the owner or operator shall notify the Executive Secretary of the date, time and place of such testing and, if determined necessary by the Executive Secretary, the owner or operator shall attend a pretest conference.

3.4.3 All tests shall be conducted while the source is operating at the maximum production or combustion rate at which such source will be operated. During the tests, the source shall burn fuels or combustion of fuels, use raw materials, and maintain process conditions representative of normal operations, and shall operate under such other relevant conditions as the Executive Secretary shall specify.

3.4.4 The Executive Secretary may reject emissions test data if they are determined to be incomplete, inadequate, not representative of operating conditions specified for the test, or if the State was not provided an opportunity to have an observer present at the test.

3.5 Emission Inventories.

3.5.1 Criteria Pollutant Inventory.

A. General Reporting Requirements.

(1) Inventory Required Annually. The owner or operator of the following stationary sources of air pollution shall submit an annual emissions inventory report:

(a) any Part 70 source located in a nonattainment or maintenance area;

(b) any Part 70 source located in an attainment area, except a temporary source, with 25 tons per year or more of combined allowable emissions of PM10, sulfur dioxide, oxides of nitrogen, volatile organic compounds and carbon monoxide;

(c) any temporary Part 70 source located in an attainment area;

(d) stationary sources located in Davis, Salt Lake, Utah and Weber counties with emissions of PM10, sulfur oxides or nitrogen oxides of 25 tons per year or more;

(e) stationary sources in Salt Lake and Davis Counties with emissions of volatile organic compounds of 10 tons per year or more;

(f) stationary sources in Salt Lake, Davis and Utah Counties with carbon monoxide emissions of 100 tons per year or more.

(2) Inventory Required Every Fifth Year. The owner or operator of a Part 70 source with less than 25 tons per year of combined allowable emissions of PM10, sulfur dioxide, oxides of nitrogen, volatile organic compounds and carbon monoxide shall submit an emissions inventory every fifth year, or more

frequently on request from the executive secretary. The first inventory shall be due in 1997.

(3) Federal Requirement. The owner or operator of a stationary source of air pollution that meets the following criteria is required to submit on an annual basis the information necessary for the State to meet the reporting requirements 40 CFR 51.321 to 51.322:

(a) any source that actually emits 100 tons per year or more of PM_{10}, sulfur oxides, VOC, carbon monoxide or nitrogen oxides; or

(b) any source that actually emits 5 tons per year or more of lead.

(4) Due Date. Emission inventories shall be submitted on or before April 15 of each calendar year following any calendar year in which the source is subject to R307-1-3.5.

(5) Reports. Emission inventory reports shall include the rate and period of emission, excess or breakdown emissions, specific plant source of air pollution, composition of air contaminant, type and efficiency of air pollution control equipment and other information necessary to quantify operation and pollution emission, and to evaluate pollution control.

3.5.2 Hazardous Air Pollutant Inventory. The owner or operator of a stationary source, either "major source" or "area source" as defined in the Federal Clean Air Act (Title I, Part A, Section 112), which emits one or more hazardous air pollutant shall submit, at the request of the Executive Secretary, but not more than once per year, a Hazardous Air Pollutant Inventory. The inventory shall be submitted no later than July 1 each year, shall be limited to hazardous air pollutants and shall include a report of the rate and period of emission, excess or breakdown emissions, the specific plant source of the emissions, the composition of the emission, the type and efficiency of air pollution control equipment, and any other information determined necessary by the Executive Secretary for the issuance of permits, the verification of compliance, and the determination of the effectiveness of control technology relative to the source's maximum achievable control technology (MACT).

3.5.3. Emission Statement Inventory.

A. Applicability. The owner or operator of a stationary source of either VOC or NOx that is located in Salt Lake or Davis Counties or a nonattainment area for ozone and which emits or has the potential to emit at least 25 tons per year of either VOC or NOx is required to submit annually an emission statement for the emissions released directly or indirectly into the outdoor atmosphere during the previous calendar year. Such emission statement shall include information concerning both VOC and NOx even if the source's emissions or its potential to emit equalled or exceeded 25 tons per year for only VOC or NOx. Compliance with the emission statement requirements does not relieve any owner or operator of a source from the responsibility to comply with any other applicable reporting requirements set forth in any federal or state law or in the conditions of approval of any order or certificate in effect.

B. Procedure for submitting an emission statement. Emission statements shall be submitted in accordance with the following provisions:

(1) Emission statements shall be submitted on or before April 15 of each calendar year following any calendar year in which the source is subject to this rule.

(2) Emission statements shall be submitted to the Division of Air Quality on a form obtainable from the Division of Air Quality.

C. Required contents of an emission statement. Any person who submits an emission statement shall include, as an integral part of the report:

(1) Certification, signed by the highest ranking individual with direct knowledge and overall responsibility for the information contained in the certified documents, that the information provided is true, accurate and complete. Such certification should be submitted with the understanding that submittal of false, inaccurate or incomplete information is subject to civil and criminal penalties.

(2) The date of the signature of certification and the telephone number of the certifying individual shall be included.

(3) The following source identification information shall be included:

(a) full name of the source;

(b) parent company name, if applicable;

(c) physical location of the source (i.e., the street address);

(d) mailing address of the source;

(e) SIC code(s) of the source;

(f) UTM coordinates or latitude and longitude of the source; and

(g) the calendar year of the emissions.

(4) The following operating data for each source operation which has the potential to emit VOC or NOx shall be included:

(a) annual and peak ozone season throughput;

(b) average days of operation per week;

(c) average hours of operation per day; and

(d) total hours of operation for the year.

(5) The following information at the process level for NOx (expressed as molecular weight of NO_2) and VOC shall be included:

(a) Emissions information, including:

(i) the actual emissions of VOC and NOx in tons per year;

(ii) the average actual emissions of VOC and NOx in pounds per day of operation during the peak ozone season;

(iii) the code for the method used to quantify the actual emissions (from Table 1 included with the filing form in R307-1-3.5.3.B(2)); and

(iv) any emission factor used to determine actual emissions.

(b) Control apparatus information, including current primary and secondary control apparatus identification codes (from Table 2 included with the filing form in R307-1-3.5.3.B(2)); and the actual control efficiency achieved by the control apparatus. If the actual control efficiency is unavailable, the control apparatus design efficiency shall be used.

(c) Process rate data, including the annual process rate and the average process rate per day of operation during the peak ozone season.

(6) In place of the information required in R307-1-3.5.3.C(4) and R307-1-3.5.3.C(5), any source which has the potential to emit less than one ton per year of either VOC or nitrogen oxides but which is subject to this rule shall include:

(a) a description of each source operation and actual emissions of each air contaminant emitted from each source

operation shall be estimated at one ton per year, or

(b) a description of each source operation; estimated actual emission in tons per year; the code for the method used to quantify the actual emissions (from Table 1 included with the filing form in R307-1-3.5.3.B(2)); and any emission factor used to determine actual emissions.

(7) Emission statements shall include cumulative total fugitive emissions for the stationary source for all fugitive emissions that cannot be reported in the information pursuant to R307-1-3.5.3.C(4) through R307-1-3.5.3.C(6) above. Such fugitive emissions shall be expressed in tons per year and in average pounds per day of operation during the peak ozone season.

(8) The method used for quantifying actual emissions for a source operation for use in preparing emission information required in R307-1-3.5.3.C(5)(a) or R307-1-3.5.3.C(6)(b) above shall be the method which is reasonably available and which best estimates the actual emissions from the source operation, unless an operating permit pursuant to Title V of the federal Clean Air Act has been issued for the stationary source. In such case, the method used shall be the method specified in the operating permit.

D. Recordkeeping requirements.

(1) Each owner or operator of a stationary source subject to this rule shall maintain for a period of two years from the due date of each emission statement a copy of the emission statement submitted to the Division of Air Quality and records indicating how the information submitted in the emission statement was determined, including any calculations, data, measurements, and estimates used.

(2) Upon the request of the Executive Secretary, the owner or operator of the stationary source shall make these records available at the stationary source for inspection by any representative of the Division of Air Quality during normal business hours.

3.6 Prevention of Significant Deterioration of Air Quality (PSD).

3.6.1 Area Designations. All areas of the State shall be designated as Class I, II, or III.

A. Pursuant to section 162(a) of the federal Clean Air Act the following areas are designated as mandatory Class I:

(1) Arches National Park
(2) Bryce Canyon National Park
(3) Canyonlands National Park
(4) Capitol Reef National Park
(5) Zion National Park

B. Pursuant to section 162(b) of the federal Clean Air Act, all other areas of the State are designated as Class II unless redesignated as provided in R307-1-3.6.2 or are designated as nonattainment areas.

3.6.2 Area Redesignation.

A. Within the restrictions and requirements of this paragraph, the Board may submit to the Governor for decision a recommendation to redesignate areas from any class to any other class.

B. In accordance with Section 162(a) of the federal Clean Air Act, areas designated as Class I under R307-1-3.6.1.A may not be redesignated.

C. In accordance with Section 164(a) of the federal Clean Air Act, the following areas may be redesignated only as Class I or II.

(1) An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreation area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and

(2) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

D. Except as provided in R307-1-3.6.2.B, C, and F, the Board may submit to the Governor for decision a recommendation to redesignate areas of the State as Class III if:

(1) There has been compliance with the requirements of R307-1-3.6.2.E;

(2) Such redesignation will not cause, or contribute to, concentrations of any air pollutant which exceed any maximum allowable increase permitted under the classification of any other area or any national ambient air quality standard; and

(3) Any permit application for any major source or major modification which could receive an approval order only if the area in question were redesignated as Class III, and any material submitted as part of that notice of intent were available, insofar as practicable, prior to any public hearing or redesignation.

In accordance with Section 164 of the federal Clean Air Act, redesignations to Class III may be approved by the Governor only after consultation with appropriate committees of the legislature and if units of local government representing a majority of the residents of the proposed area to be redesignated enact ordinances concurring in the redesignation.

E. Prior to submittal to the Governor of a recommendation to redesignate any area:

(1) Notice shall be published in each daily newspaper in the affected area and written notice shall be made to local government units, other states, Indian governing bodies, Federal Land Managers whose lands may be affected by the proposed redesignation and public hearings shall be conducted in the affected areas. Such notice shall be made at least 30 days prior to the public hearing and include a statement of the availability of the discussion outlined in R307-1-3.6.2.E(2). Prior to the issuance of a notice under this paragraph respecting the redesignation of any Federal lands, a written notice shall be given to the appropriate Federal Land Manager who shall be afforded opportunity (not to exceed 60 days) to confer with the Board respecting the redesignation and to submit written comments and recommendations. In recommending redesignation of any area with respect to which a Federal Land Manager has submitted comments the Board shall publish a list of any inconsistency between such redesignation and such comments and recommendations together with the reasons for recommending such redesignation against the recommendation of the Federal Land Manager; and

(2) A discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic and social and energy effects of the proposed redesignation, will be prepared and made available for public inspection at least 30 days prior to the hearing. Any person who petitions the Board for redesignation of an area may be required to prepare and submit to the Board the analysis required by R307-1-3.6.2.E(2).

F. Lands within the exterior boundaries of reservations of federally recognized Indian Tribes may be redesignated only by the appropriate Indian body as provided in Section 164 of the Clean Air Act.

3.6.3 Increments and Ceilings.

A. In Class I, II, or III areas, the maximum allowable increases in concentrations of sulfur dioxide, nitrogen dioxide and particulate matter over baseline concentrations of such pollutants are limited to the following:

TABLE 3

(1)Maximum Allowable Increase (ug/m^3)

Pollutant	Class I	Class II	Class III
PM10:			
Annual Arithmetic Mean	4	17	34
24-hr. Maximum	8	30	60
Sulfur Dioxide:			
Annual Arithmetic Mean	2	20	40
24-hr. Maximum	5	91	182
3-hr. Maximum	25	512	700
Nitrogen Dioxide:			
Annual Arithmetic Mean	2.5	25	50

(1) At any one location, the maximum allowable increase for other than the annual period may be exceeded once each year. For any period other than the annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

B. Variances to Class I areas will be allowed only after compliance with the requirements of and within the increments provided in Section 165 of the federal Clean Air Act, or in the case of PM10 increments, only after compliance with the Title 40 of the Code of Federal Regulations, Section 51.166(p)(4) (as amended-see the June 3, 1993 Federal Register notice, 58 FR 31637) which is hereby incorporated by reference.

C. In any area, no resultant concentration of any air pollutant shall exceed the concentration permitted under either the national secondary or primary ambient air quality standard whichever concentration is lowest for the pollutant for a period of exposure.

D. Exclusions from increment consumption. The following concentrations shall be excluded in determining compliance with a maximum allowable increase:

(1) Concentrations attributable to the increase in emissions from sources which have converted from:

(a) the use of petroleum products, natural gas, or both by reason of an order in effect under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974; or

(b) using natural gas by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act, over the emissions from such sources before the effective date of such an order or plan.

No exclusion of such concentrations shall apply more than five years after the effective date of the order or the plan. If both an order and plan are applicable, no such exclusion shall apply more than five years after the later of such effective dates.

(2) Concentrations of PM10 attributable to the increase in emissions from construction or other temporary emission-related activities.

(3) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, nitrogen oxides or PM10 from sources which are affected by plan revisions approved by EPA as meeting the criteria specified in 40 CFR 51.166(f)(4).

3.6.4 Baseline Concentration and Date.

A. Baseline concentration. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(1) The actual emissions representative of sources in existence on the applicable minor source baseline date except as provided in R307-1-3.6.4.B;

(2) The allowable emissions of major sources which commence construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

B. The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(1) actual emissions from any major source on which construction commenced after the major source baseline date, and

(2) actual emissions increases and decreases at any source occurring after the minor source baseline date.

C. Baseline date. The minor source baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(1) the area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section 107(d)(i)(D) or (E) of the federal Clean Air Act for the pollutant on the date of its complete application under 40 CFR 52.21, or R307-1-3.6; and

(2) in the case of a major source the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant. With respect to particulate matter, significant shall mean significant for PM10.

D(1) Any minor source baseline date established originally for increments of total suspended particulates shall remain in effect and shall apply for purposes of determining the amount of available PM10 increments, except that the executive secretary may rescind any such minor source baseline date where it can be shown to the executive secretary's satisfaction that the emissions increase from the major stationary source or the net emissions increase from the major modification responsible for triggering that date did not result in a significant amount of PM10 emissions.

(2) Any baseline area established originally for the increments of total suspended particulates shall remain in effect and shall apply for purposes of determining the amount of available PM10 increments, except that such baseline area shall not remain in effect if the executive secretary rescinds the corresponding minor source baseline date in accordance with R307-1-3.6.4.D(1).

3.6.5 PSD Areas - New Sources and Modifications.

A. Emission Limitations. Any source constructed or modified in a PSD area must meet all applicable emissions requirements of R307-1 and the Utah State Implementation Plan. A proposed source or modification which is not a major source or major modification may be approved without meeting the requirements in R307-1-3.6.5.B, provided such source meets all other applicable requirements of these regulations. The emission limitations shall be stated as conditions of the approval

order.

B. Major Source and Major Modification Review. Every new major source or major modification must be reviewed by the Executive Secretary to determine the air quality impact of the source to include a determination whether the source will cause or contribute to a violation of the maximum allowable increases or the NAAQS in any area. The determination of air quality impact will be made as of the source's projected start-up date. Such determination shall take into account all allowable emissions of approved sources or modifications whether constructed or not, and, to the extent practicable, the cumulative effect on air quality of all sources and growth in the affected area.

(1) In addition to meeting all other requirements of these regulations, any major source or major modification which would be constructed in a PSD area, shall:

(a) Provide the following additional information with the notice of intent required pursuant to R307-1-3.1:

(i) An analysis of the air quality impact of the source or modification and a demonstration that allowable emissions increases from the source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), will not cause or contribute to a violation of any maximum allowable increase over the baseline concentration in any area or any NAAQS in any area.

(ii) An analysis of ambient air quality in the affected area for each pollutant that a new source would have the potential to emit in a significant amount, and for each pollutant for which a modification would result in a significant net emissions increase. With respect to any such pollutant for which no NAAQS exists, the analysis shall contain such air quality monitoring data as the Executive Secretary determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect. With respect to any such pollutant (other than non-methane hydrocarbons) for which such a NAAQS does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase in any area that the emissions of that pollutant would affect. In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one year and shall represent at least the year preceding receipt of the notice of intent, except that, if the Executive Secretary determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than four months), the data that is required shall have been gathered over at least that shorter period. Any data used in the analysis must be gathered using EPA reference methods or equivalent and quality assurance procedures equivalent to 40 CFR Part 58, Appendix B. A monitoring plan will be submitted to the Executive Secretary for approval prior to data collection. The Executive Secretary may grant exceptions or modifications to these monitoring requirements when not inconsistent with federal law.

(iii) Upon request of the Executive Secretary, the air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and the air quality impact of any or all general commercial residential, industrial, and other growth which has occurred since the minor source baseline date in the area the source or modification would affect.

(iv) An analysis of the air quality related impact of the source or modification including an analysis of the impairment to visibility, soils, and vegetation and the projected air quality impact from general commercial, residential, industrial, and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

(b) After construction of the source or modification, conduct such ambient air quality monitoring as the Executive Secretary determines may be necessary to establish the effect which the emissions from the source or modification may have on the air quality in any area.

(2) If the Executive Secretary finds that the emissions from a proposed major source or major modification would cause a violation of any maximum allowable increase over the baseline concentration in any area, the Executive Secretary shall approve the proposed source if and only if:

(a) the new source or modification is required to meet a more stringent emission limitation sufficient to avoid a violation of the maximum allowable increase and/or

(b) the new source or modification has acquired sufficient offset to avoid a violation of the maximum allowable increase, and

(c) the new emission limitations for the proposed source and for any affected existing sources are enforceable.

(3) If the Executive Secretary finds that the emissions from a proposed major source or major modification would contribute to a known violation of any maximum allowable increase over the baseline concentration in any area, the Executive Secretary shall approve the proposed source if and only if:

(a) the new source or modification has acquired sufficient emission offset so as to provide a positive net air quality benefit in the affected area, and

(b) any new emission limitations for affected existing sources are enforceable.

C. The requirements of R307-1-3.6.5.B(1) shall not apply to a major source or major modification if:

(1) The source is a portable stationary source which has previously received a permit under this paragraph, and

(a) The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary; and

(b) The emissions from the source would not exceed its allowable emissions; and

(c) The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated;

(2) The source or modification would be a non-profit health or non-profit educational institution and the Board approves a request that it be exempt from those requirements.

(3) The source or modification would be a major source or major modification only if fugitive emission and fugitive dust, to the extent quantifiable, are considered in calculating the potential to emit of the source or modification and the source

does not belong to any of the following categories:

(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.

(4) With respect to a particular pollutant, the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

(a) would impact no Class I area and no area where an applicable increment is known to be violated, and

(b) would be temporary.

D. The requirements of R307-1-3.6.5.B(1) as they relate to any maximum allowable increase for a Class II area shall not apply to a major modification at a source that was in existence on March 1, 1978, if the net increase in allowable emissions for each pollutant from the modification after the application of best available control technology would be less than 50 tons per year.

E.(1) The requirements of R307-1-3.6.5.B(1)(a)(i) pertaining to the impact analysis shall not apply to a source or modification with respect to any maximum allowable increase for nitrogen oxides if the owner or operator of the source or modification submitted a notice of intent before October 15, 1990, and the Executive Secretary subsequently determined that the notice of intent as submitted before that date was complete.

(2) The requirements of R307-1-3.6.5.B(1)(a)(i) concerning an analysis of the maximum allowable increase over the baseline concentration shall not apply to a stationary source or modification with respect to any maximum allowable increase for PM10 if the owner or operator of the source or modification submitted an application for a permit before December 15, 1994, and the executive secretary subsequently determined that the application as submitted before that date was complete. Instead, the applicable requirements shall be with respect to the maximum allowable increases for total suspended particulates as in effect on the date the application was submitted. These increments were, for the annual geometric mean: 5, 19, and 37 micrograms/cubic meter for Class I, II and III areas respectively and, for the 24-hour maximum: 10, 37 and 75 micrograms/cubic meter for Class I, II and III areas respectively.

F. Exemption - Monitoring Requirement

(1) The Executive Secretary may grant exceptions or modifications to the monitoring requirements in R307-1-3.6.5.B(1)(a)(ii) which are not inconsistent with federal law.

(2) The Executive Secretary may exempt a stationary source or modification from the requirements of R307-1-3.6.5.B(1)(a)(ii) with respect to monitoring for a particular pollutant if:

(a) The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the following amounts:

Carbon monoxide - 575 ug/m^3, 8-hour average;

Nitrogen dioxide - 14 ug/m^3, annual average;

PM10 - 10 micrograms/cubic meter, 24-hour average;

Sulfur dioxide - 13 ug/m^3, 24-hour average;

Lead - 0.1 ug/m^3, 24-hour average;

Mercury - 0.25 ug/m^3, 24-hour average;

Beryllium - 0.0005 ug/m^3, 24-hour average;

Ozone - No de minimis air quality level is provided for ozone. However, any proposed source or modification subject to PSD with net increase of 100 tons per year or more of volatile organic compounds subject to PSD would be required to perform an ambient impact analysis including the gathering of ambient air quality data;

Fluorides - 0.25 ug/m^3, 24-hour average;

Vinyl chlorides - 15 ug/m^3, 24-hour average;

Total reduced sulfur - 10 ug/m^3, 1-hour average;

Hydrogen sulfide - 0.04 ug/m^3, 1-hour average;

Reduced sulfur compounds - 10 ug/m^3, 1-hour average; or

(b) The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in R307-1-3.6.5.F(2)(a), or the pollutant is not listed in R307-1-3.6.5.F(2)(a).

3.6.6 Increment Violations.

Where the Board determines that an increment under R307-1-3.6.3 is violated, the Board shall promulgate a plan and implement regulations to eliminate the violation.

3.6.7 Banking of Emission Offset Credit in PSD Areas. Banking of emission offset credits in PSD areas will be permitted. To preserve banked emission reductions the Executive Secretary must identify them in either the Utah SIP or an order and shall provide a registry to identify the person, private entity, or government authority that has the right to use or allocate the banked emission reduction and to record any transfer of or lien on these rights.

3.7 Air Quality Modeling.

3.7.1 Use of Dispersion models. All estimates of ambient

concentrations derived in meeting the requirements of these rules shall be based on appropriate air quality models, data bases, and other requirements specified in 40 CFR Part 51, Appendix W, (Guideline on Air Quality Models). Where an air quality model specified in the Guideline on Air Quality Models or other EPA approved guidance documents is inappropriate, the Executive Secretary may authorize the modification of the model or substitution of another model. In meeting the requirements of federal law, any modification or substitution will be made only with the written approval of the Administrator, EPA.

3.7.2 Modeling of Criteria Pollutant Impacts in Attainment Areas. Prior to receiving an approval order, a new source in an attainment area with a total controlled emission rate per pollutant greater than or equal to amounts specified in Table 4, or a modification to an existing source located in an attainment area which increases the total controlled emission rate per pollutant of the source in an amount greater than or equal to those specified in Table 4, shall conduct air quality modeling, as identified in R307-1-3.7.1, to estimate the impact of the new or modified source on air quality unless previously performed air quality modeling for the source indicates that the addition of the proposed emissions increase would not violate a National Ambient Air Quality Standard or a Prevention of Significant Deterioration increment, as determined by the Executive Secretary.

TABLE 4

POLLUTANT	EMISSIONS
sulfur dioxide	40 tons per year
oxides of nitrogen	40 tons per year
PM10 - fugitive emissions and fugitive dust	5 tons per year
PM10 - non-fugitive emissions or non-fugitive dust	15 tons per year
carbon monoxide	As required under R307-1-3.6.5.B
lead	0.6 tons per year

3.7.3 Documentation of Ambient Air Impacts for Hazardous Air Pollutants. Prior to receiving an approval order under R307-1-3.1, a source shall provide documentation of increases in emissions of hazardous air pollutants as required under R307-1-3.7.3.C. for all installations not exempt under R307-1-3.7.3.A.

A. Exempted Installations.

(1) The requirements of R303-1-3.7.3. do not apply to installations which are subject to or are scheduled to be subject to an emission standard promulgated under 42 U.S.C. 7412 at the time a notice of intent is submitted, except as defined in R307-1-3.7.3.A(2). This exemption does not affect requirements otherwise applicable to the source, including requirements under R307-1-3.1.

(2) The executive secretary may, upon making a written determination that the delay in the implementation of an emission standard under 40 CFR Part 63 might reasonably be expected to pose an unacceptable risk to public health, require, on a case-by-case basis, notice of intent documentation of emissions consistent with R307-1-3.7.3.C.

(a) The executive secretary shall notify the source in writing of the preliminary decision to require some or all of the documentation as listed in R307-1-3.7.3.C.

(b) The source may respond in writing within thirty days of receipt of the notice, or such longer period as the executive secretary approves.

(c) In making a final determination, the executive secretary shall document objective bases for the determination, which may include public information and studies, documented public comment, the applicant's written response, the physical and chemical properties of emissions, and ambient monitoring data.

B. Lead Compounds Exemption. The requirements of R307-1-3.7.3. do not apply to emissions of lead compounds. Lead compounds shall be evaluated pursuant to requirements of R307-1-3.7.2.

C. Submittal Requirements.

(1) Each applicant's notice of intent shall include:

(a) the estimated maximum pounds per hour emission rate increase from each affected installation,

(b) the type of release, whether the release flow is vertically restricted or unrestricted, the maximum release duration in minutes per hour, the release height measured from the ground, the height of any adjacent building or structure, the shortest distance between the release point and any area defined as "ambient air" under 40 CFR 50.1(e) for each installation for which the source proposes an emissions increase,

(c) the emission threshold value, calculated to be the applicable threshold limit value - time weighted average (TLV-TWA) or the threshold limit value - ceiling (TLV-C) multiplied by the appropriate emission threshold factor listed in Table 5, except in the case of arsenic, benzene, beryllium, and ethylene oxide which shall be calculated using chronic emission threshold factors, and formaldehyde, which shall be calculated using an acute emission threshold factor. For acute hazardous air pollutant releases having a duration period less than one hour, this maximum pounds per hour emission rate shall be consistent with an identical operating process having a continuous release for a one-hour period.

TABLE 5 EMISSION THRESHOLD FACTORS FOR HAZARDOUS AIR POLLUTANTS
(cubic meter pounds per milligram hour)

VERTICALLY-RESTRICTED AND FUGITIVE EMISSION RELEASE POINTS

DISTANCE TO PROPERTY BOUNDARY	ACUTE	CHRONIC	CARCINOGENIC
20 Meters or less	0.038	0.051	0.017
21 - 50 Meters	0.051	0.066	0.022
51 - 100 Meters	0.092	0.123	0.041
Beyond 100 Meters	0.180	0.269	0.090

VERTICALLY-UNRESTRICTED EMISSION RELEASE POINTS

DISTANCE TO PROPERTY BOUNDARY	ACUTE	CHRONIC	CARCINOGENIC
50 Meters or less	0.154	0.198	0.066
51 - 100 Meters	0.224	0.244	0.081
Beyond 100 Meters	0.310	0.368	0.123

(2) A source with a proposed maximum pounds per hour emissions increase equal to or greater than the emissions threshold value shall include documentation of a comparison of the estimated ambient concentration of the proposed emissions with the applicable toxic screening level specified in R307-1-3.7.3.D.

(3) A source with an estimated ambient concentration equal to or greater than the toxic screening level shall provide additional documentation regarding the impact of the proposed

emissions. The executive secretary may require such documentation to include, but not be limited to:

(a) a description of symptoms and adverse health effects that can be caused by the hazardous air pollutant,

(b) the exposure conditions or dose that is sufficient to cause the adverse health effects,

(c) a description of the human population or other biological species which could be exposed to the estimated concentration,

(d) an evaluation of land use for the impacted areas,

(e) the environmental fate and persistency.

D. Toxic Screening Levels and Averaging Periods.

(1) The toxic screening level for an acute hazardous air pollutant is 1/10th the value of the TLV-C, and the applicable averaging period shall be:

(a) one hour for emissions releases having a duration period of one hour or greater,

(b) one hour for emission releases having a duration period less than one hour if the emission rate used in the model is consistent with an identical operating process having a continuous release for a one-hour period or more, or

(c) the dispersion model's shortest averaging period when using an applicable model capable of estimating ambient concentrations for periods of less than one hour.

(2) The toxic screening level for a chronic hazardous air pollutant is 1/30th the value of the TLV-TWA, and the applicable averaging period shall be 24 hours.

(3) The toxic screening level for all carcinogenic hazardous air pollutants is 1/90 the value of the TLV-TWA, and the applicable averaging period shall be 24 hours, except in the case of formaldehyde which shall be evaluated consistent with R307-1-3.7.3.D(1) and arsenic, benzene, beryllium, and ethylene oxide which shall be evaluated consistent with R307-1-3.7.3.D(2).

3.8 Stack Heights and Dispersion Techniques. The degree of emission limitation required of any source for control of any air contaminant to include determinations made under 3.1, 3.3, and 3.6 must not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique except as provided in paragraph 3.8.1 of these regulations. This paragraph does not restrict, in any manner, the actual stack height of any source.

1. The provisions in this subsection 3.8 shall not apply to:

A. stack heights in existence, or dispersion techniques implemented on or before December 31, 1970, except where pollutants are being emitted from such stacks or using such dispersion techniques by sources which were constructed or reconstructed, or for which major modifications were carried out after December 31, 1970; or

B. coal-fired steam electric generating units subject to the provisions of Section 118 of the Clean Air Act, which commenced operation before July 1, 1957, and whose stacks were constructed under a construction contract awarded before February 8, 1974.

2. The Executive Secretary may require the source owner or operator to provide a demonstration that the source stack height meets good engineering practice as required by this subsection 3.8.

3.9 Fees - Major Sources. The owner and operator of each new major source or major modification is required to pay a fee to the Department sufficient to cover the reasonable costs of reviewing and acting upon the notice of intent required pursuant to subsection 3.1 for each new major source or major modification and implementing and enforcing requirements placed on such source by any approval order issued pursuant to such notice (not including any court costs associated with any enforcement action).

A. The Executive Secretary will provide the owner or operator of each new major source or major modification with an itemized bill for services upon issuance of an approval order. Such a bill for services shall represent the actual costs to the Department for reviewing and acting upon the notice of intent and shall be due and payable upon receipt.

B. The Executive Secretary shall provide the owner or operator of each new major source or major modification with an itemized bill for services upon completion of an initial compliance inspection and/or source testing and/or any enforcement action brought about by the issuance of an approval order. Such bill shall represent the actual costs to the Department for the inspection, testing and/or enforcement action and shall be due and payable upon receipt.

C. A request for review or reconsideration of the bill provided by the Executive Secretary to the owner or operator of a source affected by this subsection 3.9 may be filed by the owner or operator of said source with the Executive Secretary within 20 days of receipt. The Board shall consider the request for review and determine the appropriateness of the bill.

3.10 Visibility

1. The Executive Secretary shall review any new major source or major modification proposed in either an attainment area or area of nonattainment area for the impact of its emissions on visibility in any mandatory Class I area. As a condition of any approval order issued to a source under subsection 3.1 of these regulations, the Executive Secretary shall require the use of air pollution control equipment, technologies, methods or work practices deemed necessary to mitigate visibility impacts in Class I areas that would occur as a result of emissions from such source. The Executive Secretary shall take into consideration as a part of the review and control requirements:

A. the costs of compliance;

B. the time necessary for compliance;

C. the energy usage and conservation;

D. the non air quality environmental impacts of compliance;

E. the useful life of the source; and

F. the degree of visibility improvement which will be provided as a result of control.

In determining visibility impact by a major new source or major modification, the Executive Secretary shall use, the procedures identified in the EPA publication "Workbook For Estimating Visibility Impacts" (EPA 450-4-80-031) November 1980, or equivalent.

The Executive Secretary shall insure that source emissions will be consistent with making reasonable progress toward the national visibility goal referred to in 40 CFR, 51.300(a).

2. The Executive Secretary shall notify the Federal Land Manager having jurisdiction over any mandatory Class I area of

any proposed new major source or major modification that may reasonably be expected to affect visibility in that mandatory Class I area. Such notification shall be in writing and shall include a copy of all information relevant to the Notice of Intent and visibility impact analysis submitted by the source. The notification shall be made within thirty (30) days of receipt of the completed Notice of Intent and at least sixty (60) days prior to any public hearing or the commencement of any public comment period, held in accordance with R307-1-3.1 of these regulations, on the proposal. The Executive Secretary shall consider, as a part of the new or modified source review required by R307-1-3.10, any analysis performed by the Federal Land Manager that such proposed new major source or major modification may have an adverse impact on visibility in any mandatory Class I area, provided such analysis is submitted to the Executive Secretary within sixty (60) days of the notification to the Federal Land Manager as required by this paragraph. If the Executive Secretary determines that the major source or major modification will have an adverse impact on visibility in any mandatory Class I area, the Executive Secretary shall not issue the approval order. Where the Executive Secretary determines that such analysis does not demonstrate that adverse impact on visibility will result in a mandatory Class I area, the Executive Secretary will, in the notice of any public hearing held on the new major source or major modification proposal, explain the decision or give notice where the explanation can be obtained.

Where the Executive Secretary receives advance notification or early consultation with a major new source or major modification which may affect visibility prior to the submission of a Notice of Intent to Construct for the major new source or major modification, the Executive Secretary will notify the affected Federal Land Manager within thirty (30) days of such advance notification.

3. If the analysis required by R307-1-3.10.1 predicts that an adverse impact on visibility may reasonably be expected to occur in a mandatory Class I area, the Executive Secretary may require a proposed new major source or major modification to perform pre-construction and/or post-construction visibility monitoring in any mandatory Class I area as deemed necessary and appropriate to assess the impact of the proposed source or modification on visibility. Such monitoring shall be conducted in accordance with a monitoring plan prepared by the owner or operator of the source or his representative and approved by the Executive Secretary.

4. The Executive Secretary will consider in review and permitting of a new major source or major modification to an existing source, any visibility monitoring data provided by the Federal Land Manager which may reasonably be expected to be impacted by the proposed new major source or major modification.

5. The Executive Secretary may perform oversight audits of any network collecting visibility data which may be used as a part of the permitting process as determined necessary.

R307-1-4. Emissions Standards.

Section R307-1-3 may require more stringent controls than listed herein, in which case the requirements of R307-1-3 must be met.

4.1 Visible Emissions. Opacity limitations in R307-1-4.1 shall not apply to any sources for which emission limitations are assigned pursuant to R307-1-3.2. The provisions of R307-1-4.1.7 through R307-1-4.1.9 shall apply to such sources except as otherwise provided in R307-1-3.2.

4.1.1 In PM10 Nonattainment Areas, visible emissions from existing installations except gasoline powered internal combustion engines, shall be of a shade or density no darker than 20% opacity. Installations in other areas of the State which were constructed before April 25, 1971, except internal combustion engines, shall be of a shade or density no darker than 40% opacity except as provided in these regulations.

4.1.2 Visible emissions from installations constructed after April 25, 1971, except internal combustion engines, or any incinerator shall be of a shade or density no darker than 20% opacity, except as otherwise provided in these regulations.

4.1.3 No owner or operator of a gasoline powered engine or vehicle shall allow, cause or permit the emissions of visible contaminants except for starting motion no farther than 100 yards, or for stationary operation not exceeding 3 minutes in any hour.

4.1.4 Emissions from diesel engines manufactured after January 1, 1973, shall be of a shade or density no darker than 20% opacity, except for starting motion no farther than 100 yards or for stationary operation not exceeding 3 minutes in any hour.

4.1.5 Emissions from diesel engines manufactured before January 1, 1973, shall be of a shade or density no darker than 40% opacity, except for starting motion no farther than 100 yards or for stationary operation not exceeding 3 minutes in any hour.

4.1.6 Upon application, exceptions to paragraphs 4.1.4 and 4.1.5 may be granted by the Board on a case by case basis for diesel locomotives operating above 6000 feet MSL.

4.1.7 Visible emissions exceeding the opacity standards for short time periods as the result of initial warm-up, soot blowing, cleaning of grates, building of boiler fires, cooling, etc., caused by start-up or shutdown of a facility, installation or operation, or unavoidable combustion irregularities which do not exceed three minutes in length (unavoidable combustion irregularities which exceed three minutes in length must be handled in accordance with R307-1-4.7), shall not be deemed in violation provided that the executive secretary finds that adequate control technology has been applied. The owner or operator shall minimize visible and non-visible emissions during start-up or shutdown of a facility, installation, or operation through the use of adequate control technology and proper procedures.

4.1.8 Compliance Method. Emissions shall be brought into compliance with these requirements by reduction of the total weight of contaminants discharged per unit of time rather than by dilution of emissions with clean air.

4.1.9 Opacity Observation. Opacity observations of emissions from stationary sources shall be conducted in accordance with EPA Method 9, "Visual Determination of Opacity of Emissions from Stationary Sources", 40 CFR Part 60, Appendix A. Opacity observers of mobile sources and intermittent sources shall use procedures similar to Method 9, but the requirement for observations to be made at 15 second

intervals over a 6-minute period shall not apply.

4.2 Sulfur Content of Fuels.

4.2.1 Any coal, oil, or mixture thereof, burned in any fuel burning or process installation not covered by New Source Performance Standards for sulfur emissions shall contain no more than 1.0 pound sulfur per million gross BTU heat input for any mixture of coal nor .85 pounds sulfur per million gross BTU heat input for any oil.

A. In the case of fuel oil, it shall be sufficient to record the following specifications for each purchase of fuel oil from the vendor: 1) Weight Percent Sulfur 2) Gross Heating Value (btu per unit volume) and 3) Density. These parameters shall be ascertained in accordance with the methods of the American Society for Testing and Materials.

B. In the case of coal, it shall be necessary to obtain a representative grab sample for every 24 hours of operation and the sample shall be tested in accordance with the methods of the American Society for Testing and Materials.

C. All sources located in the SO_2 nonattainment area covered by Section IX, Part H of the Utah State Implementation Plan which are required to comply with specific fuel (oil or coal) sulfur content limitations must demonstrate compliance with their limitations in accordance with paragraphs A and B above.

D. Records of fuel sulfur content shall be kept for all periods when the plant is in operation and shall be made available to the executive secretary upon request, and shall include a period of two years ending with the date of the request.

E. If the owner/operator of the source can demonstrate to the executive secretary that the inherent variability of the coal they are receiving from the vendor is low enough such that the testing requirements outlined above may be deemed excessive, then an alternative testing plan may be approved for use with the same source of coal.

F. Any person may apply to the executive secretary for approval of an alternative test method, an alternative method of control, an alternative compliance period, an alternative emission limit, or an alternative monitoring schedule. The application must include a demonstration that the proposed alternative produces an equal or greater air quality benefit than that required by R307-1-4.2, or that the alternative test method is equivalent to that required by these rules. The executive secretary shall obtain concurrence from EPA when approving an alternative test method, an alternative method of control, an alternative compliance period, an alternative emission limit, or an alternative monitoring schedule.

4.2.2 Any person engaged in operating fuel burning equipment using coal or fuel oil, which is not covered by New Source Performance Standards for sulfur emissions, may apply for an exemption from the sulfur content restrictions of R307-1-4.2.1. The applicant shall furnish evidence, that the fuel burning equipment is operating in such a manner as to prevent the emission of sulfur dioxide in amounts greater than would be produced under the limitations of R307-1-4.2.1. Control apparatus to continuously prevent the emission of sulfur greater than provided by R307-1-4.2.1 must be specified in the application for an exemption.

4.2.3 In case an exemption is granted, the operator shall install continuous emission monitoring devices approved by the executive secretary. The operator shall provide the executive secretary with a monthly summary of the data from such monitors. This summary shall be such as to show the degree of compliance with R307-1-4.2.1. It shall be submitted no later than the calendar month succeeding its recording. When exemptions from R307-1-4.2.1 are granted, the source's application for such exemption must specify the test method for determining sulfur emissions. The test method must agree with the NSPS test method for the same industrial category.

4.2.4 Methods for determining sulfur content of coal and fuel oil shall be those methods of the American Society for Testing and Materials.

A. For determining sulfur content in coal, ASTM Methods D3177-75 or D4239-85 are to be used.

B. For determining sulfur content in oil, ASTM Methods D2880-71 or D4294-89 are to be used.

C. For determining the gross calorific (or BTU) content of coal, ASTM Methods D2015-77 or D3286-85 are to be used.

4.4 Automobile Emission Control Devices. Any person owning or operating any motor vehicle or motor vehicle engine registered in the State of Utah on which is installed or incorporated a system or device for the control of crankcase emissions or exhaust emissions in compliance with the Federal motor vehicle rules, shall maintain the system or device in operable condition and shall use it at all times that the motor vehicle or motor vehicle engine is operated. No person shall remove or make inoperable within the State of Utah the system or device or any part thereof, except for the purpose of installing another system or device, or part thereof, which is equally or more effective in reducing emissions from the vehicle to the atmosphere.

4.5 Provisions for fugitive emissions and fugitive dust have been renumbered to R307-12.

4.6 Provisions for continuous emission monitoring systems have been renumbered to R307-13.

4.7 Unavoidable Breakdown. This applies to all regulated pollutants including those for which there are National Ambient Air Quality Standards. Except as otherwise provided in R307-1-4.7, emissions resulting from an unavoidable breakdown will not be deemed a violation of these regulations. If excess emissions are predictable, they must be authorized under the variance procedure in R307-1-2.3. Breakdowns that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered unavoidable breakdown.

4.7.1 Reporting. A breakdown for any period longer than 2 hours must be reported to the executive secretary within 3 hours of the beginning of the breakdown if reasonable, but in no case longer than 18 hours after the beginning of the breakdown. During times other than normal office hours, breakdowns for any period longer than 2 hours shall be initially reported to the Environmental Health Emergency Response Coordinator, Telephone (801) 536-4123. Within 7 calendar days of the beginning of any breakdown of longer than 2 hours, a written report shall be submitted to the executive secretary which shall include the cause and nature of the event, estimated quantity of pollutant (total and excess), time of emissions and steps taken to control the emissions and to prevent recurrence. The submittal of such information shall be used by the executive

secretary in determining whether a violation has occurred and/or the need of further enforcement action.

4.7.2 Penalties. Failure to comply with the reporting procedures of R307-1-4.7.1. will constitute a violation of these regulations.

4.7.3 The owner or operator of an installation suffering an unavoidable breakdown shall assure that emission limitations and visible emission limitations are exceeded for only as short a period of time as reasonable. The owner or operator shall take all reasonable measures which may include but are not limited to the immediate curtailment of production, operations, or activities at all installations of the source if necessary to limit the total aggregate emissions from the source to no greater than the aggregate allowable emissions averaged over the periods provided in the source's approval orders or the UACR. In the event that production, operations or activities cannot be curtailed so as to so limit the total aggregate emissions without jeopardizing equipment or safety or measures taken would result in even greater excess emissions, the owner or operator of the source shall use the most rapid, reasonable procedure to reduce emissions. The owner or operator of any installation subject to a SIP emission limitation pursuant to these rules shall be deemed to have complied with the provisions of R307-1-4.7 if the emission limitation has not been exceeded.

4.7.4 Failure to comply with curtailment actions required by R307-1-4.7.3 will constitute a violation of these rules.

4.8 In accordance with paragraph 110(a)(6), Clean Air Act as amended August 1977, owners or operators may not temporarily reduce the pay of any employee by reason of the use of a supplemental or intermittent or other dispersion dependent control system for the purposes of meeting any air pollution requirement adopted pursuant to the Clean Air Act as amended August 1977.

4.9 Requirements for ozone nonattainment areas and Davis and Salt Lake Counties have been renumbered to R307-14.

4.10 Abrasive Blasting.

4.10.1 Visible Emission Standards.

A. No person shall, if he complies with performance standards outlined in R307-1-4.10.3 or if he is not located in an area of nonattainment for particulates, discharge into the atmosphere from any abrasive blasting any air contaminant for a period or periods aggregating more than three minutes in any one hour which is a shade or density darker than 40% opacity.

B. No person shall, if he is not complying with an applicable performance standard in R307-1-4.10.3 and is in an area of nonattainment, discharge into the atmosphere from any abrasive blasting any air contaminant for a period or periods aggregating more than three minutes in any one hour which is of a shade or density no darker than 20% opacity.

4.10.2 Visible Emission Evaluation Techniques. Visible emission evaluation of abrasive blasting operations shall be conducted in accordance with the following provisions:

A. Emissions from unconfined blasting shall be read at the densest point of the emission after a major portion of the spent abrasive has fallen out, at a point not less than five feet nor more than twenty-five feet from the impact surface from any single abrasive blasting nozzle.

B. Emissions from unconfined blasting employing multiple nozzles shall be judged as a single source unless it can be demonstrated by the owner or operator that each nozzle, evaluated separately, meets the emission and performance standards provided for in R307-1-4.10.

C. Emissions from confined blasting shall be read at the densest point after the air contaminant leaves the enclosure.

4.10.3 Performance Standards.

A. To satisfy the requirements of R307-1-4.10.1, any abrasive blasting operation may use at least one of the following performance standards:

(1) Confined blasting;

(2) Wet abrasive blasting;

(3) Hydroblasting; or

(4) Unconfined blasting using abrasives as defined in R307-1-4.10.3.B.

B. Abrasives. Abrasives used for dry unconfined blasting referenced in R307-1-4.10.3.A shall comply with the following performance standards:

(1) Before blasting the abrasive shall not contain more than 1% by weight material passing a #70 U.S. Standard sieve.

(2) After blasting the abrasive shall not contain more than 1.8% by weight material 5 micron or smaller.

Abrasives reused for dry unconfined blasting are exempt from R307-1-4.10.3.B(2), but must conform with R307-1-4.10.3.B(1).

C. Abrasive Certification. Sources using the performance standard of R307-1-4.10.3.A(4) to meet the requirements of R307-1-4.10.1 must demonstrate they have obtained abrasives from persons which have certified (submitted test results) to the executive secretary at least annually that such abrasives meet the requirements of R307-1-4.10.3.B.

4.12 Emission standards for residential solid fuel burning devices and fireplaces have been renumbered to R307-17.

R307-1-5. Emergency Controls.

5.1 Air Pollution Emergency Episodes.

5.1.1 Determination of an episode and its extent or stage shall be made by the Executive Secretary taking into consideration the levels of pollutant concentrations contained at 40 CFR Section 51.151 and 40 CFR Section 51, Appendix L, and summarized in the table below:

TABLE

AIR POLLUTION EPISODE CRITERIA
(values in micrograms/cubic meter unless stated otherwise)

POLLUTANT	ALERT	WARNING	EMERGENCY	NEVER TO BE EXCEEDED
SULFUR DIOXIDE 24-hour average	800 (0.3 ppm)	1,600 (0.6 ppm)	2,100 (0.8 ppm)	2,620 (1.0 ppm)
PM10 24-hour average	350	420	500	600
CARBON MONOXIDE 8-hour average	17,000 (15 ppm)	34,000 (30 ppm)	46,000 (40 ppm)	57,500 (50 ppm)
4-hour average				86,300 (75 ppm)
1-hour average				144,000 (125 ppm)
OZONE 1-hour average	400 (0.2 ppm)	800 (0.4 ppm)	1,000 (0.5 ppm)	

2-hour average				1,200 (0.6 ppm)
NITROGEN DIOXIDE 1-hour average	1130 (0.6 ppm)	2,260 (1.2 ppm)	3,000 (1.6 ppm)	3,750 (2.0 ppm)
NITROGEN DIOXIDE 24-hour average	282 (0.15 ppm)	565 (0.3 ppm)	750 (0.4 ppm)	938 (0.5 ppm)

An air pollution alert, air pollution warning, or air pollution emergency will be declared when any one of the above pollutants reaches the specified levels at any monitoring site.

In addition to the levels listed for the above pollutants, meteorological conditions are such that pollutant concentrations can be expected to remain at the above levels for twelve (12) or more hours or increase, or in the case of ozone, the situation is likely to reoccur within the next 24-hours unless control actions are taken.

ALERT The Alert level is that concentration at which first stage control action is to begin.

WARNING The warning level indicates that air quality is continuing to degrade and that additional control actions are necessary.

EMERGENCY The emergency level indicates that air quality is continuing to degrade toward a level of significant harm to the health of persons and that the most stringent control actions are necessary.

5.1.2 The Executive Secretary shall also take into consideration, to determine an episode and its extent, rate of change of concentration, meteorological forecasts, and the geographical area of the episode, including a consideration of point and area sources of emission, where applicable.

5.1.3 If an episode is determined to exist, the Executive Director, with concurrence of the Governor shall:

A. Make public announcements pertaining to the existence, extent and area of the episode.

B. Require corrective measures as necessary to prevent a further deterioration of air quality.

5.1.4 Episode termination shall be announced by the Executive Director, with concurrence of the Governor, once monitored pollutant concentration data and meteorological forecasts determine the crisis is over.

R307-1-6. Eligibility of Pollution Control Expenditures for Sales Tax Exemption and Income Tax Credit.

6.1 Eligibility of Pollution Control Expenditures for Sales Tax Exemption.

6.1.1 Application for certification shall be made on forms provided by the State Department of Environmental Quality, and shall include all information requested thereon and such additional reasonably necessary information as is requested by the executive secretary of the Air Quality Board or the executive secretary of the Water Quality Board.

6.1.2 Certification shall be made only for taxpayers who are owners, operators (under a lease) or contract purchasers of a trade or business that utilizes Utah property with a pollution control facility to prevent or minimize pollution.

6.1.3 Date of filing shall be date of receipt of the final item of information requested and this filing date shall initiate the 120-day review period.

6.1.4 All materials, equipment and structures (or part thereof) purchased, leased or otherwise procured and services utilized for construction or installation in a water or air pollution control facility shall be eligible for certification, provided:

A. such materials, equipment, structures (or part thereof), and services installed, constructed, or acquired result in a demonstrated reduction of pollutant discharges or emission pollutant levels, and

B. the primary purpose of such materials, equipment, structures (or part thereof), and services is preventing, controlling, reducing, or disposing of water or air pollution.

The above includes expenditures which reduce the amount of pollutants produced as well as expenditures which result in removal of pollutants from waste streams. The materials, equipment, structures (or part thereof), and services that are necessary for the proper functioning of air or water pollution control facilities meeting the requirements of Subsections R307-1-6.1.4.A and R307-1-6.1.4.B, including equipment required for compliance monitoring, shall be eligible for certification.

6.1.5 Applications for certification shall be certified by the executive secretary of the Air Quality Board or the executive secretary of the Water Quality Board after consultation with the State Tax Commission and only if:

A. Air Quality

(1) the air pollution control facility in question has been reviewed and approved by the executive secretary of the Air Quality Board for those air pollution sources needing review in accordance with Section R307-1-3.1 of these rules, or

(2) the air pollution control facilities installed, constructed, or acquired are the result of the requirements of these rules (permits by rule) or the State Implementation Plan.

B. Water Quality

(1) plans for the water pollution control facility in question require review and approval by the Water Quality Board and have been so approved, or

(2) the water pollution control facility is specifically required by the Water Quality Board, including facilities constructed for pretreatment of wastes prior to discharge to a public sewerage system in accordance with Subsection R317-8-8.1, but excluding facilities which are permitted by rule under Subsection R317-6-6.2 (Ground Water Discharge Permit by Rule) unless required to obtain an individual permit by the Water Quality Board, or

(3) the water pollution control facility is required and permitted by another statutory board within the Department of Environmental Quality, or

(4) the water pollution control facility eliminates or reduces the discharge of pollutants which would be regulated by the Water Quality Board, if such pollutants were discharged.

6.1.6 The following items are specifically not eligible for certification:

A. materials and supplies used in the normal operation or maintenance of the water or air pollution control facilities;

B. materials, equipment, and services used to monitor ambient air or water, unless required for a permit or approval from a statutory board within the Department of Environmental Quality;

C. materials, equipment, and services for collection, treatment, and disposal of human wastes, unless the primary

purpose of such materials, equipment and services is the treatment of industrial wastes;

D. materials, equipment and services used in removal, treatment, or disposal of pollutants from contaminated ground water, if the applicant caused the ground water contamination by failing to comply with applicable permits, approvals, rules, or standards existing at the time the contamination occurred; and

E. air conditioners.

6.1.7 Upon determination that facilities described in any application under Subsection R307-1-6.1.1 satisfy the requirements of these rules and Sections 19-2-123 through 19-2-127 the executive secretary of the Air Quality Board or the executive secretary of the Water Quality Board shall issue a certification of pollution control facility to the applicant.

6.1.8 If the application is rejected, the applicant may appeal to the appropriate Board within 20 days for an informal hearing. The Board's decision will be final and conclusive on all parties unless appealed.

6.1.9 Revocation of prior certification shall be made for any of the circumstances prescribed in Section 19-2-126, after consultation with the State Tax Commission.

6.2 Eligibility of Expenditures for Purchase of Vehicles that Use Cleaner Burning Fuels or Conversion of Vehicles and Special Fuel Mobile Equipment to Use Cleaner Burning Fuels for Corporate and Individual Income Tax Credits.

6.2.1 Definitions. The following definitions apply only to R307-1-6.2.

A. "Clean Fuel" means:

(1) propane, natural gas, or electricity;

(2) other fuel the Air Quality Board determines annually on or before July 1, to be at least as effective as fuels under R307-1-6.2.1.A(1) in reducing air pollution; or

(3) fuel that meets the clean fuel vehicle standards specified in Part C of Title II of the federal Clean Air Act.

B. "Certified by the Board" is defined in Utah Code 59-7-605(1)(b) and 59-10-127(1)(b).

C. "Special Fuel Mobile Equipment" is defined in Utah Code 59-7-605(1)(d) and 59-10-127(1)(d).

D. "Conversion System" means a package which may include fuel, ignition, emissions control, and engine components that are modified, removed, or added during the process of modifying a motor vehicle or a special fuel mobile equipment to operate on a clean fuel.

6.2.2 As specified in Sections 59-7-, and 59-10-127 for tax years beginning January 1, 1997, and ending December 31, 2001, there is a credit against tax otherwise due in an amount equal to:

A. 20%, up to a maximum of $500 per vehicle, of the cost of new motor vehicles being registered in Utah and for the first time that are fueled by a clean fuel;

B. 20%, up to a maximum of $400, of the cost of equipment for conversion, if certified by the Board, of a motor vehicle registered in Utah to be fueled by a clean fuel; and

C. 20%, up to a maximum of $500, of the cost of equipment for conversion, if certified by the Board, of a special fuel mobile equipment engine to be fueled by a clean fuel or a fuel substantially more effective in reducing air pollution than the fuel for which the engine was originally designed.

6.2.3 No person may convert a motor vehicle to use a clean fuel in a manner that violates Section 203(a) of the Act or the "Interim Tampering Enforcement Policy" of the Environmental Protection Agency, June 15, 1974.

6.2.4 Proof of purchase of an item for which a credit specified in R307-1-6.2.2.A is allowed shall be made by submitting to the executive secretary:

A. a copy of the Manufacturer's Statement of Origin;

B. an original or copy of the purchase order, customer invoice, or receipt including the vehicle identification number (VIN); and

C.(1) a copy of the Manufacturer's Suggested Retail Price document that includes a clean fuel option on the equipment list for that vehicle or

(2) in the case of vehicles certified as meeting the Clean Fleet Vehicle standards specified in Part C of the federal Clean Air Act, the owner must make the vehicle available for verification by a representative of the executive secretary of an under-hood decal on the vehicle for which the credit is requested stating "This vehicle (or engine, as applicable) conforms to California regulations applicable to (model-year) new (TLVE, LEV, ULEV, or ZEV) (specify motorcycles, passenger cars, light-duty trucks, medium-duty diesel engines, as applicable)."

6.2.5.A. Proof of purchase of an item for which a credit specified in R307-1-6.2.2.B or C is allowed shall be made by submitting to the executive secretary a copy of the purchase order, customer invoice, or receipt.

B. The proof of purchase specified in Subsection R307-1-6.2.5.A must be completed and signed by the person that converted the vehicle or the special fuel mobile equipment, and must include the following information:

(1) owner's name;

(2) owner's social security number or taxpayer identification number;

(3) vehicle VIN or identification number of the special fuel mobile equipment;

(4) fuel type before conversion;

(5) fuel type after conversion;

(6) conversion system manufacturer;

(7) conversion system model number;

(8) date of the conversion;

(9) name, address, and phone number of the person that converted the vehicle or the special fuel mobile equipment;

(10) documentation of compliance with all existing applicable technician certification requirements, as specified in 53-7-301 through 316, R710-6, and R714-400-7.P, for the person that performed the installation of the conversion system, by providing the technician's current valid certification number;

(11) documentation that the conversion system installed has been certified by the Board, by providing the current valid certification number issued by the executive secretary in accordance with R307-6.2.6; and

(12) for vehicle conversions, copies of the vehicle inspection reports (VIR) before and after the conversion, indicating that the vehicle passed the current applicable inspection and maintenance (I/M) emission test in the county where the vehicle is registered. The owner is exempt from the VIR submission requirements, only if a vehicle is registered and is converted in a county that does not implement any inspection

and maintenance program. If the vehicle is registered in a non-I/M county and is converted in an I/M county, VIR submission is required.

6.2.6 Procedures for Obtaining Certification by the Board for Fuel Conversion Systems.

A. For vehicles.

(1) The executive secretary will issue a certificate, stating that the fuel conversion system for a specific fuel, vehicle class, and engine type has been certified by the Board, if the system manufacturer submits the following information to the executive secretary and if the executive secretary decides the conversion system has met all applicable requirements:

(a) description of each conversion system, fuel used, vehicle certification class (including vehicle type and vehicle weight class), and engine type;

(b) Federal Test Procedure (FTP) mass emissions test data which:

(i) is collected in high altitude conditions as defined by the Environmental Protection Agency (EPA) using EPA approved equipment, test procedures and practices, and meeting EPA emissions certification standards, as defined in 40 CFR Part 86;

(ii) shows that tests conducted before and after installation of the conversion system demonstrate a reduction in total emissions and that there is no increase in emissions for each regulated pollutant compared to emission levels when operated on the original fuel prior to the conversion;

(iii) is tested on two vehicles for each vehicle certification class which have accumulated at least 4,000 miles each;

(c) system engineering specifications.

(2) The executive secretary will issue a certificate if the federal Environmental Protection Agency has certified the conversion system, or if the fuel conversion system has been certified by a state whose certification standards are recognized by the Board.

(3) Special provisions.

(a) After conversion, dual-fuel or flexible-fuel vehicles shall be required to undergo at least one Federal Test Procedure on conventional fuel and must demonstrate that the EPA emissions certification standards in 40 CFR Part 86 for that vehicle type and model year on the conventional fuel are being met.

(b) The executive secretary may waive the requirement for testing to be conducted at high altitude, specified in R307-1-6.2.6.A(1)(b)(i), if the manufacturer demonstrates that the conversion system provides an equivalent emission reduction.

(c) Acceptability of Canadian data will be determined on a case-by-case basis after demonstrating to the satisfaction of the executive secretary that the test is equivalent to the Federal Test Procedure.

(d) Vehicle conversions must comply with EPA Mobile Source Enforcement Memorandum No. 1A., dated June 25, 1974.

B. For special fuel mobile equipment.

(1) The executive secretary will issue a certificate, stating that the fuel conversion system for a specific fuel and mobile equipment engine type has been certified by the Board, if the system manufacturer submits the following information to the executive secretary and if the executive secretary decides the conversion system has met all applicable requirements:

(a) description of each conversion system, fuel used, and mobile equipment engine type;

(b) emissions test data showing that the conversion system results in an emission reduction of total emissions and that there is no increase in emissions for each regulated pollutant in comparison with emission levels when operated on the original fuel prior to the conversion; and

(c) system engineering specifications.

(2) The executive secretary will issue a certificate if the federal Environmental Protection Agency has certified the conversion system or if the fuel conversion system has been certified by a state whose certification standards are recognized by the Board.

(3) The executive secretary shall evaluate the certification of conversion system for special fuel mobile equipment on a case-by-case basis as new technologies are improved.

C. Certification by other states may be accepted by the executive secretary if it meets the requirements specified in R307-1-6.2.6.A and B.

D. The executive secretary will revoke the certification of a conversion system if an investigation finds that a certified conversion system exceeds the level of emissions for which it was certified, taking into account deterioration because of age or other reasonable concern.

6.2.7 The executive secretary will acknowledge receipt of proofs specified in R307-1-6.2 by signing the relevant written statement provided on forms prescribed by the State Tax Commission.

6.3 Eligibility of Expenditures for Purchase and Installation Costs of Fireplaces and Wood Stoves that Use Cleaner Burning Fuels.

6.3.1 Definitions. The following definitions apply only to Subsection R307-1-6.3.

A. Fireplaces and wood stoves using clean burning fuels are:

(1) continual-feed wood pellet stoves

(2) high-mass wood stoves

(3) natural gas or propane free-standing fireplaces or inserts, but not including fireplace log systems, or

(4) any wood burning stove, fireplace, or fireplace insert that is certified by the Environmental Protection Agency in accordance with test procedures prescribed in 40 CFR Section 60.534.

6.3.2 As specified in Subsection 59-7-110.8, and Section 59-10-128 for tax years beginning January 1, 1992, and ending December 31, 1997, there is a credit against tax otherwise due under this chapter in an amount equal to 10%, up to a maximum of $50, of the total of:

A. the purchase price or

B. both the purchase price and installation cost of each approved fireplace or wood stove.

6.3.3 Proof of purchase of an item for which a credit specified in Subsection R307-1-6.3.2 is allowed shall be made by submitting to the executive secretary, or representative appointed by the executive secretary:

A. a copy of the sales receipt clearly stating the make, model, and price paid for the equipment and installation, and

B. a completed copy of the "Clean Fuel Alternative Tax Credit Stoves/Fireplaces" form identifying the:

(1) owner's name and address;

(2) owner's social security number or taxpayer identification number;

(3) dealer's name and address;

(4) fireplace make and model;

(5) fireplace serial number;

(6) purchase price;

(7) installer's name and company name; and

(8) installation cost.

6.3.4 An authorized representative of the executive secretary will acknowledge receipt of proofs specified in Subsection R307-1-6.3.3 by signing the relevant written statement provided on the State Tax Commission "Clean Fuel Alternative Tax Credit Stoves/Fireplaces" form.

R307-1-8. Asbestos Certification, Asbestos Work Practices, and Implementation of Toxic Substances Control Act, Title II.

8.1 Definitions: The definitions in this subsection apply only to R307-1-8.

"Adequately wet" means to sufficiently mix or penetrate with liquid to prevent the release of particulate. If visible emissions are observed coming from asbestos containing material, then that material has not been adequately wetted. However, the absence of visible emissions is not sufficient evidence of being adequately wet.

"AHERA" means the federal Asbestos Hazard Emergency Response Act of 1986 and the Environmental Protection Agency implementing regulations, 40 CFR Part 763, Subpart E - Asbestos-Containing Materials in Schools.

"Airlock" means a system for allowing access to an area with minimum air movement through the system. The airlock typically consists of two curtained doorways separated by a distance of at least 3 feet such that personnel pass through one doorway into the airlock, allowing the doorway sheeting to overlap and close off the opening before proceeding through the second doorway, thereby preventing flow-through of contaminated air.

"Amended water" means a mixture of water and a chemical surfactant or a wetting agent that provides equivalent control of asbestos fiber release.

"Asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, and actinolite-tremolite.

"Asbestos-containing material" means any material containing more than one percent (1%) asbestos as determined using the method specified in Appendix A, Subpart F, 40 CFR Part 763 Section 1, Polarized Light Microscopy. If the asbestos content is less than 10% as determined by a method other than point counting using polarized light microscopy (PLM), verify the asbestos content by point counting using PLM.

"Asbestos contractor" means any person who contracts for hire to perform an asbestos project or an asbestos inspection.

"Asbestos Inspection" means an activity undertaken to determine the presence or location, or to assess the condition of, asbestos-containing material or suspected asbestos-containing material, whether by visual or physical examination, or by taking samples of the material. This term includes reinspections of the type described in AHERA, 40 CFR 763.85(b), of known or assumed asbestos-containing material which has been previously identified. The term does not include the following:

1. periodic surveillance of the type described in AHERA, 40 CFR 763.92(b), solely for the purpose of recording or reporting a change in the condition of known or assumed asbestos-containing material;

2. inspections performed by employees or agents of federal, state, or local government solely for the purpose of determining compliance with applicable statutes or regulations; or

3. visual inspections of the type described in AHERA, 40 CFR 763.90(i), solely for the purpose of determining completion of response actions.

"Asbestos project" means any activity, involving the removal, encapsulation, enclosure, renovation, repair, demolition, salvage, disposal, or other disturbance of friable asbestos-containing material.

"Asbestos project operator" means any asbestos contractor, any person responsible for the persons performing an asbestos project in an area to which the general public has unrestrained access, or any LEA responsible for the persons performing an asbestos project in a school building subject to AHERA.

"Asbestos removal" means the stripping of asbestos-containing materials from surfaces or components of a structure and to take out structural components that contain or are covered with friable asbestos-containing material from a structure.

"Asbestos waste" means mill tailings or any waste that contains commercial asbestos and is generated by a source subject to R307-1-8. This term includes filters from control devices, friable asbestos-containing waste material, and bags or other similar packaging contaminated with commercial asbestos. As applied to demolition and renovations, this term includes materials contaminated with asbestos including disposable equipment and clothing.

"Asbestos worker" means a person who,in a nonsupervisory capacity, performs an asbestos project.

"CFR" means Code of Federal Regulations.

"Certification" means an authorization issued by the executive secretary to persons who engage in asbestos projects or who act as asbestos workers, supervisors, inspectors, project designers, or management planners.

"Clean room" means an uncontaminated area or room which is part of the worker decontamination system and which has provisions for storage of workers' street clothes and clean protective equipment.

"Consultant" means a person who acts as an inspector, management planner, project designer, or any combination thereof.

"Delegated local agency" means a public agency having a memorandum of agreement with the Utah Department of Environmental Quality, Utah Air Quality Board, that assigns designated responsibilities for the administration of NESHAP Subpart M and/or R307-1-8 to the public agency.

"Demolition" means the wrecking or removal of any load-supporting structural member of a structure together with any related handling operations or the intentional burning of any structure.

"Emergency renovation operation" means any asbestos

project which was not planned but results from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, is necessary to protect equipment from damage, or is necessary to avoid imposing an unreasonable financial burden. This term includes operations necessitated by nonroutine failure of equipment.

"Encapsulation" means the application of an encapsulating agent to asbestos-containing materials to control the release of asbestos fibers into the air.

"Encapsulating agent" means a coating applied to the surface of friable asbestos-containing materials for the purpose of preventing the release of asbestos fibers. The encapsulating agent creates a membrane over the surface (bridging encapsulant) or penetrates the material and binds its components together (penetrating encapsulant).

"Enclosure" means an airtight, impermeable, permanent barrier around asbestos containing material to prevent the release of asbestos fibers into the air.

"Equipment room" means a contaminated area or room which is part of the asbestos worker decontamination system with provisions for storage of contaminated clothing and equipment.

"Friable asbestos-containing material" means any asbestos-containing material that hand pressure can crumble, pulverize, or reduce to powder when dry.

"HEPA filtration" means the high efficiency particulate air filtration found in respirators and vacuum systems capable of filtering particles greater than 0.3 micron in diameter with 99.97% efficiency, for use in asbestos-contaminated environments.

"Inspector" means a person who performs an asbestos inspection.

"LEA" means a local education agency as defined in AHERA.

"Management planner" means a person who prepares a management plan for a school building subject to AHERA.

"Minor fiber release episode" means any uncontrolled or unintentional disturbance of asbestos-containing material resulting in a visible emission which involves the falling or dislodging of three square or linear feet or less of friable asbestos-containing material.

"Model Accreditation Plan" means 40 CFR Part 763, Subpart E, Appendix C, Asbestos Model Accreditation Plan.

"NESHAP" means the National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61, Subpart M, the National Emission Standard for Asbestos.

"NESHAP size asbestos project" means any asbestos project that involves at least:

(a) 260 linear feet (80 meters) of pipe covered with friable asbestos-containing material;

(b) 160 square feet (15 square meters) of friable asbestos-containing material used to cover or coat any duct, boiler, tank, reactor, turbine, equipment, structure, structural member, or structural component; or

(c) 35 cubic feet (one cubic meter) of friable asbestos-containing material removed from structural members or components where the length and area could not be measured previously.

"OSHA" means Occupational Safety and Health Administration.

"Planned asbestos project" means asbestos projects in which the amount of asbestos-containing material to be removed, stripped, or otherwise disturbed within a calendar year, January 1 through December 31, is the NESHAP size. This term includes nonscheduled renovation operations necessitated by the routine failure of equipment, which is expected to occur within a given period based on past operating experience.

"Project designer" means a person who designs an asbestos project other than:

1. a small-scale, short duration asbestos project; or

2. an asbestos project necessitated by a minor fiber release episode.

"Public and commercial building" means the interior space of any building which is not a school building, except that the term does not include any residential apartment building of fewer than 10 units or detached single-family homes.

"Public agency" means any federal or state department, bureau, institution or agency thereof, any municipal corporation, county, city, or other political or taxing subdivision of the state.

"Renovation" means altering in any way one or more structural components. Operations in which load-supporting structural members are wrecked or taken out are excluded.

"Response Action" means a method, including removal, encapsulation, enclosure, repair, and operation and maintenance, that protects human health and the environment from friable asbestos-containing material.

"Shower room" means a room between the clean room and equipment room in the worker decontamination system with hot and cold or warm running water controllable at the tap and suitably arranged for complete showering during worker decontamination.

"Single family residential dwelling" means any structure or portion of a structure whose primary use is for housing of one family. Residential portions of multi-unit dwellings such as apartment buildings, condominiums, duplexes and triplexes are also considered to be, for the purposes of R307-1-8, single family residential dwellings; common areas such as hallways, entryways, and boiler rooms are not single family residential dwellings.

"Site supervisor" means a person who meets the definition of a "competent person" as cited in 29 CFR 1926.1101 (OSHA) and has the authority to act as the agent of the asbestos project operator at the asbestos project work site.

"Small-scale, short-duration asbestos project" means an asbestos project such as, but not limited to:

(1) removal of asbestos-containing insulation on pipes;

(2) removal of small quantities of asbestos-containing insulation on beams or above ceilings;

(3) replacement of an asbestos-containing gasket on a valve;

(4) installation or removal of a small section of drywall;

(5) installation of electrical conduits through or proximate to asbestos-containing materials. Small-scale, short-duration asbestos projects can further be defined by the following considerations:

(6) removal and/or repair of small quantities of asbestos-containing materials only if required in the performance of another maintenance activity not intended as asbestos

abatement;

(7) removal of asbestos-containing thermal system insulation not to exceed amounts greater than those which can be contained in a single glove bag;

(8) minor repairs to damaged thermal system insulation which do not require removal;

(9) repairs to a piece of asbestos-containing wallboard;

(10) repairs, involving removal, encapsulation or enclosure, to small amounts of friable asbestos-containing material only if required in the performance of emergency or routine renovation activity not intended solely as asbestos abatement. Such work may not exceed amounts greater than those which can be contained in a single prefabricated mini-enclosure. Such an enclosure shall conform spatially and geometrically to the localized work area, in order to perform its intended containment function.

"Strip" means to take off asbestos containing material from any part of a structure or structural component.

"Structural component" means any pipe, duct, boiler, tank, reactor, turbine, or furnace at or in a structure or any structural member of the structure.

"Structural member" means any load-supporting member of a structure, such as beams and load-supporting walls or any non-load-supporting member, such as ceilings and non-load-supporting walls.

"Structure" means, for the purposes of R307-1-8: any institutional, commercial, residential, or industrial building, equipment, building component, installation, or other construction.

"Supervisor" means a person who carries out or oversees an asbestos project.

"TSCA accreditation" means successful completion of training as an inspector, management planner, project designer, contractor/supervisor, or worker, as specified in the Toxic Substances Control Act, Title II.

"TSCA Title II" means 15 U.S.C. 2641 through 2656, Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response, and 40 CFR Part 763, Subpart E - Asbestos-Containing Materials in Schools, including appendices.

"Waste generator" means any owner or operator of a source covered by R307-1-8 whose act or process produces asbestos waste.

"Waste shipment record" means the shipping document, that the waste generator originates and signs, and is used to track and substantiate the disposition of asbestos waste.

"Worker decontamination system" means an enclosed area, isolated from areas which are not contaminated with asbestos, consisting of a clean room, shower room, and equipment room, each separated from the other by airlocks and accessible through doorways protected with two overlapping polyethylene sheets.

"Working day" means Monday through Friday and includes holidays that fall on any of the days Monday through Friday.

8.2 Applicability.

8.2.1 Certification and Accreditation Requirements.

A. Asbestos project in a structure.

(1) The following persons shall be certified, as specified under Subsection R307-1-8.3, prior to conducting an asbestos project in a structure:

(a) asbestos contractors; and

(b) inspectors.

(2) The asbestos project operator shall ensure the following persons are trained or accredited, as specified in Subsection R307-1-8.4, prior to conducting an asbestos project:

(a) supervisors;

(b) asbestos workers; and

(c) persons who disturb any amount of friable asbestos-containing material in areas to which the general public has unrestrained access.

B. Asbestos activity subject to TSCA Title II. The following persons shall be certified, as specified in Subsection R307-1-8.3, prior to conducting an asbestos activity subject to TSCA Title II:

(1) asbestos contractors;

(2) supervisors;

(3) asbestos workers;

(4) inspectors;

(5) management planners; and

(6) project designers.

8.2.2 Work Practice Requirements.

The work practice requirements of Section R307-1-8 apply to any asbestos project operator who performs an asbestos project; persons who disturb any amount of friable asbestos-containing material in an area where the general public has unrestrained access; and to asbestos workers, supervisors, and consultants who perform work on an asbestos project.

8.2.3 The requirements of R307-10-1 (NESHAP 40 CFR Part 61 Subpart M, the National Emission Standard for Asbestos) apply to asbestos projects subject to R307-1-8.

8.3 Certification and Accreditation Requirements

8.3.1 Asbestos Contractor, Supervisor, and Consultant Certification Requirements.

A. Certificate required.

(1) The following persons shall obtain a certificate:

(a) Asbestos contractors, prior to engaging in an asbestos project in a structure;

(b) inspectors, prior to contracting for hire to perform an asbestos inspection, performing an asbestos inspection in an area to which the general public has unrestrained access, or performing an asbestos inspection in a building subject to TSCA Title II (public and commercial building);

(c) supervisors, asbestos workers, and project designers, prior to engaging in an asbestos project subject to the accreditation requirements of TSCA Title II; and

(d) management planners, prior to preparing a management plan for a school building subject to AHERA.

(2) The requirements of R307-1-8.3.1.A shall not apply to a person who performs an asbestos project on a single family residential dwelling that is his primary residence.

B. Application for certification. Asbestos contractors, supervisors, asbestos workers, and consultants required to be certified under Subsection R307-1-8.3.1.A(1) shall:

(1) submit a completed application to the executive secretary on forms provided by the executive secretary;

(2) pay the authorized certification fee to the Division of Air Quality; and

(3) provide evidence that they have complied with the requirements of the applicable Subsections R307-1-8.3.2, R307-

1-8.3.3, R307-1-8.3.4, or R307-1-8.3.5, respectively, and any additional information requested by the executive secretary.

8.3.2 Asbestos Contractor.

(A) In order to be certified as required under Subsection R307-1-8.3.1.A(1), an asbestos contractor shall submit:

(1) a master plan that describes in detail how the contractor will comply with Section R307-1-8 during asbestos projects or asbestos inspections, including the setup procedures, work practices, decontamination and cleanup practices, and equipment that will be typically used during asbestos projects;

(2) copies of medical surveillance records of employees and the contractor's respiratory protection program as required by 29 CFR 1926.1101 (OSHA);

(3) a list of the other states where the asbestos contractor is licensed or certified for asbestos project work, if applicable; and a list of all previous names used by the asbestos contractor;

(4) a description of past compliance history relating to asbestos activities, if applicable;

(5) evidence that all asbestos workers and supervisors who conduct work on an asbestos project:

(a) subject to TSCA Title II are certified as specified in the applicable Subsections of R307-1-8.3; and

(b) in a structure are TSCA accredited or passed a training course approved in accordance with Subsection R307-1-8.4.5; and

(6) evidence that all asbestos inspectors are certified as specified in Subsection R307-1-8.3.

B. Certificate transfer prohibited. The transfer of an asbestos contractor certificate is prohibited. Whenever there is a change in the controlling interest of the legal entity certified, a new certificate is required.

8.3.3 Supervisor.

In order to be certified as a supervisor as required under Subsection R307-1-8.3.1.A, supervisors shall submit certificates of initial and current contractor/supervisor TSCA accreditation in a state that has a Contractor Accreditation Program that meets the Model Accreditation Plan or from a training course approved in accordance with Subsection R307-1-8.4.5.

8.3.4 Asbestos Worker.

In order to be certified as an asbestos worker as required under Subsection R307-1-8.3.1.A, asbestos workers shall submit certificates of initial and current asbestos worker TSCA accreditation in a state that has a Contractor Accreditation Program that meets the Model Accreditation Plan or from a training course approved in accordance with Subsection R307-1-8.4.5.

8.3.5 Consultant and Consultant-in-training.

A consultant may be certified to perform asbestos-related activities in one or more of the following disciplines: inspector; management planner; or project designer. A consultant-in-training may be certified in one or more of the following disciplines: inspector in training; management planner in training; or project designer in training.

A. Certified Consultant.

(1) In order to be certified as a consultant, an applicant shall submit:

(a) evidence from employers of the appropriate hours of experience as specified in R307-1-8.3.5.A(2), (3) (4) and (5) in performing the duties outlined for the specific discipline in Subsection R307-1-8.3.5.B.; and

(b) certificates of initial and current TSCA accreditation for the specific discipline in a state that has a Contractor Accreditation Program that meets the Model Accreditation Plan or from a training course approved in accordance with Subsection R307-1-8.4.5.

(2) The experience requirements specified under Subsection R307-1-8.3.5.A(1)(a) may be gained working as a TSCA accredited consultant, by being responsible for persons accredited as consultants,by being under the direct supervision of a TSCA accredited consultant, or by working as a consultant-in-training under the direct supervision of a certified consultant, for the specific discipline.

(3) An applicant with a bachelor's degree in engineering, architecture, industrial hygiene, science or a related field must have at least 1,000 hours experience as specified under Subsection R307-1-8.3.5.A(1)(a).

(4) An applicant with a two year associate degree in a field related to engineering, architecture, industrial hygiene, science, or a similar field must have at least 2,000 hours experience as specified under Subsection R307-1-8.3.5.A(1)(a).

(5) An applicant with a high school degree must have at least 4,000 hours experience as specified under Subsection R307-1-8.3.5.A(1)(a).

B. Applicable experience.

(1) Inspector: experience performing the field work portion of asbestos inspections, including collecting bulk samples, categorizing asbestos containing material, assessing asbestos containing material, and preparing inspection reports;

(2) Management Planner.

(1) In order to be a consultant certified as a management planner, an applicant shall submit:

(a) evidence from employers of experience evaluating inspection reports, selecting response actions, analyzing the cost of response actions, ranking response actions, preparing operations and maintenance plans, and preparing management plans. The inspector experience requirements as specified under Subsection R307-1-8.3.5.B(1) may be substituted for Subsection R307-1-8.3.5.B(2) to meet the management planner experience requirements.

(3) Project Designer: experience designing, preparing, and evaluating specifications for asbestos abatement projects; preparing bidding documents, architectural drawings and schematic drawings of asbestos project work sites; determining the methods of asbestos abatement; and assessing the health hazards associated with asbestos containing material in structures. Registration as a professional engineer, licensed architect, or certified industrial hygienist may be substituted for experience as a project designer to meet the project designer experience requirements.

C. Consultant-in-training Certification. In order to be certified as a consultant-in-training, an applicant shall submit:

(1) certificates of initial and current TSCA accreditation for the specific discipline in a state that has a Contractor Accreditation Program that meets the Model Accreditation Plan or from a training course approved in accordance with Subsection 8.4.5; and

(2) the name and certification number of the certified consultant(s) who will directly supervise and review the

performance of all duties listed in Subsection R307-1-8.3.5.B for the specific discipline.

8.3.6 Exemption of Supervisors from Certification as an Asbestos Worker. A certified supervisor may perform the duties of an asbestos worker without being certified or accredited as an asbestos worker.

8.3.7 Action on an Application.

A. Response to Application. Within 30 calendar days after receiving a completed application, including all additional information requested, the executive secretary will issue certification or deny the application.

B. Denial of Application.

(1) The executive secretary may deny an application if the executive secretary determines that the applicant has not demonstrated compliance and/or the ability to comply with the applicable requirements, procedures, and standards established by Sections R307-1-8 and R307-10-1 (NESHAP Subpart M, the National Emission Standard for Asbestos).

(2) Upon being denied certification, the applicant may request a hearing before the Utah Air Quality Board as provided by law.

8.3.8 Suspension and Revocation.

The executive secretary may revoke or suspend any certification based upon violations of any requirement stated herein or in Section R307-10-1 (NESHAP). Justifications for suspension or revocation may include, but are not limited to: falsification or knowing omission of any written submittals required as part of Section R307-1-8, omission or improper use of work practices, improper disposal of friable asbestos-containing materials, spread of asbestos beyond the containment area, use of untrained or unaccredited workers for asbestos projects, or use of improper respirators. Certification may be revoked or suspended if the certified person fails to have his certification at the work site, permits the duplication or use of his own certification or TSCA accreditation by another, performs work for which certification or TSCA accreditation has not been received, or obtains TSCA accreditation from a training provider that does not have approval for the specific discipline in accordance with the Model Accreditation Plan.

8.3.9 Duration and Renewal of Certification.

A. Duration. Unless revoked or suspended, a certification shall remain in effect:

(1) for a period of one year from the date of issuance of certification as an asbestos contractor, or

(2) until the expiration date of the current certificate of TSCA accreditation submitted with an asbestos worker's, supervisor's, or consultant's application for certification or recertification.

B. Renewal. The executive secretary shall renew a certification annually if:

(1) the asbestos contractor:

(a) submits a completed application for renewal on forms provided by the executive secretary not sooner than 90 days nor later than 30 days from the date of expiration;

(b) has complied with all applicable requirements and rules.

(2) the consultant:

(a) submits a completed application for renewal on a form provided by the executive secretary no later than one year from the date of expiration of previous certification, and

(b) submits a certificate of TSCA accreditation for initial or refresher training in the specific discipline.

8.3.10 Procedure for Obtaining a Duplicate Certificate.

The executive secretary may issue a duplicate certificate to replace a lost, stolen, or mutilated certificate. The certificate holder shall submit a completed application for a duplicate certificate on a form provided by the executive secretary. A duplicate certificate shall have "duplicate" stamped on the face and shall bear the same number and expiration date as the original certificate.

8.4 Training.

8.4.1 Asbestos Worker Training.

Each asbestos project operator shall ensure that each asbestos worker assigned to perform work on an asbestos project for the operator has had initial and annual review training at a course approved by the executive secretary. Asbestos workers on projects subject to TSCA Title II must have the appropriate TSCA accreditation. Training courses for TSCA accreditation shall meet the specifications for a worker course in the Model Accreditation Plan, including course length, instructor qualifications, hands-on training, and written examination. Training courses other than TSCA accreditation courses shall cover the following topics:

A. Initial Training. The initial training course for asbestos workers shall provide a minimum of 16 hours of training covering the topics specified below:

(1) physical characteristics of asbestos (fiber size, aerodynamics);

(2) methods of recognizing and identifying asbestos;

(3) health effects of asbestos exposure and methods used to recognize asbestos-related diseases;

(4) relationship between smoking and asbestos exposure in producing lung cancer;

(5) use of personal hygiene and protective equipment, storage and laundering of launderable clothing;

(6) purpose, proper use, fitting instructions, and limitations of respirators in accordance with OSHA 29 CFR 1926.1101;

(7) state-of-the-art work practices for performing asbestos abatement activities, including the purpose, proper construction, and maintenance of barriers and decontamination enclosure systems; posting of warning signs; electrical and ventilation system lockout; proper working techniques for minimizing fiber release; use of wet methods and surfactants; use of negative pressure ventilation equipment; use of glove bags; use of HEPA vacuums; and proper cleanup and disposal procedures;

(8) OSHA medical surveillance program requirements;

(9) OSHA air monitoring procedures and requirements;

(10) review of R307-1-8, NESHAP, and OSHA requirements, including information disclosure requirements, and how to contact the agencies responsible for enforcing them;

(11) individual instruction consisting of an individual qualitative respirator fit test and an opportunity to use respirators; and

(12) additional safety hazards encountered during abatement activities and how to deal with them, including electrical hazards, heat stress, air contaminants other than asbestos, fire and explosion hazards, slips, trips, and falls, and

confined spaces.

B. Annual Training. Asbestos workers shall attend refresher training annually. The annual refresher course must be approved by a state that has a Contractor Accreditation Program that meets the Model Accreditation Plan or be approved in accordance with Subsection R307-1-8.4.5. The training course shall meet the specifications for a worker refresher course in the Model Accreditation Plan.

8.4.2 Supervisor Training:

A. Initial Training. Supervisors shall complete a contractor/supervisor TSCA accreditation course in a state that has a Contractor Accreditation Program that meets the Model Accreditation Plan or from a training course approved in accordance with Subsection R307-1-8.4.5. The training course shall meet the specifications for a contractor/supervisor course in the Model Accreditation Plan, including course length, instructor qualifications, hands-on training, and written examination.

B. Annual Training. Supervisors shall attend a 1-day refresher training course annually. The annual refresher course must be approved by a state that has a Contractor Accreditation Program that meets the Model Accreditation Plan or be approved in accordance with Subsection R307-1-8.4.5. The training course shall meet the specifications for a contractor/supervisor refresher course in the Model Accreditation Plan.

8.4.3 TSCA Accreditation.

Each person seeking TSCA accreditation shall complete the initial and refresher training outlined in the Model Accreditation Plan.

8.4.4 Examination Required.

A. The asbestos project operator shall ensure that each person who has completed the initial training specified in Subsection R307-1-8.4 has taken and passed a written closed book examination that adequately covers the topics included in the training course. A passing score for the examination is 70 percent or above. The person conducting the training course shall administer the examination.

B. Each person seeking TSCA accreditation shall pass a written closed book examination as specified in the Model Accreditation Plan. The accreditation examination required for any course approved under this subsection shall be administered by the person conducting the training course.

8.4.5 Approval of Training Courses.

A. Initial Training Courses: Persons desiring approval of courses conducted for the purpose of providing the initial training required under Section R307-1-8 shall submit the following to the executive secretary for review:

(1) name, address, phone number, and institutional affiliation of person sponsoring the course;

(2) a list of States that currently approve the training course;

(3) the course curriculum;

(4) a letter that clearly indicates how the course meets the applicable Model Accreditation Plan and Subsection R307-1-8 requirements for:

(a) length of training in hours or days, as applicable;

(b) amount and type of hands-on training, if applicable;

(c) examinations (length, format, example of examination or questions, and passing scores);

(d) topics covered in the course;

(5) a copy of all course materials (student manuals, instructor notebooks, handouts, etc.);

(6) a detailed statement about the development of the examination used in the course;

(7) names and qualifications of all course instructors, who must have academic credentials and/or field experience in asbestos abatement; and

(8) description and an example of numbered certificates issued to students who attend the course and pass the examination. The numbered certificate shall include a unique certificate number, the name of the student and the course completed, the dates of the course and the examination, an expiration date 1 year from the date the student completed the course and examination, the name, address, and telephone number of the training provider that issued the certificate, and a statement that the person receiving the certificate has completed the requisite training for TSCA accreditation.

B. Refresher training. Persons desiring approval of refresher training courses shall send the following information to the executive secretary:

(1) length of training;

(2) topics covered in the course;

(3) a copy of all course materials;

(4) names and qualifications of all course instructors;

(5) description and an example of numbered certificates issued to students who attend the course. The numbered certificate shall include a unique number, the name of the student, the course completed, the date of the course, and an expiration date 1 year from the date the student completed the course, the name, address, and telephone number of the training provider that issued the certificate, and a statement that the person receiving the certificate has completed the requisite training for TSCA accreditation.

C. The executive secretary shall issue approval of a training course if the person conducting the course:

(1) submits the written notification required in Subsections R307-1-8.4.5.A or R307-1-8.4.5.B above;

(2) demonstrates to the satisfaction of the executive secretary that the course provides the minimum training specified in the applicable subsections of R307-1-8.4.1, R307-1-8.4.2, and R307-1-8.4.3;

(3) agrees to:

(a) provide the executive secretary with the names, social security numbers, and certificate numbers of all persons successfully completing the course;

(b) provide the executive secretary with an up-to-date course schedule stating all times and locations at which the course will be presented;

(c) provide the executive secretary with the name and qualifications of any new course instructor prior to the new instructor presenting a training course;

(d) keep the records specified for training providers in the Model Accreditation Plan; and

(e) permit the executive secretary or his authorized representative to attend, evaluate and monitor any training course without receiving advance notice from the executive secretary and without charge to the executive secretary.

D. The executive secretary may revoke or suspend approval of a training course if the course does not provide training that meets the requirements of Section R307-1-8 or the Model Accreditation Plan.

E. Training courses shall be reviewed annually by the executive secretary to determine their acceptability for continued approval.

F. Training obtained from a course which has not been approved by the executive secretary may be accepted if the executive secretary determines that the course provided training equivalent to that required in R307-1-8. TSCA accreditation courses already approved in a state that has a Contractor Accreditation Program that meets the TSCA Title II Appendix C Model Plan, or approved by EPA under TSCA Title II are considered to be equivalent to the TSCA accreditation training required in Section R307-1-8.

8.4.6 Approval of New Training Course Instructors.

A. Each course provider approved under Subsection R307-1-8.4.5 shall obtain approval for any course instructor not included in the initial course approval. To obtain approval of an instructor, the course provider shall submit:

(1) the name and qualifications of the course instructor, who must have academic credentials and/or field experience in the discipline for which they are an instructor; and

(2) a list of the courses and specific topics which will be taught by the instructor.

B. Each course instructor must be approved by the executive secretary before teaching any course for TSCA accreditation purposes.

8.5 Notification.

8.5.1 NESHAP Size Asbestos Projects.

After November 20, 1990, an asbestos project operator shall submit a written notification, in accordance with this subsection, for each NESHAP size asbestos project he performs.

A. If the NESHAP size asbestos project will be performed at a location:

(1) that is within the jurisdiction of a delegated local agency, submit the written notification and pay the appropriate notification fee to the delegated local agency; or

(2) that is not within the jurisdiction of a delegated local agency, submit the written notification to the executive secretary and pay the authorized notification fee to the Division of Air Quality.

B. Send original and revised written notices by U.S. Postal Service, commercial delivery service, or hand delivery.

C. Postmark or deliver the written notice within the following time periods:

(1) If the operation is a NESHAP size asbestos project, notify the appropriate agency at least ten working days before disturbing asbestos containing material.

(2) If the operation is a planned asbestos project, notify the appropriate agency at least ten working days before the beginning of the calendar year, January 1, during which the project(s) will occur.

(3) If the operation is an emergency asbestos project, notify the appropriate agency as early as possible, but not later than, the following working day.

D. Update the written notice, as necessary, including when the amount of asbestos affected changes by at least 20 percent.

E. Written notifications must include the following information:

(1) the type of notification: original or revised;

(2) the name, address, and telephone number of the owner of the structure, removal contractor, and any other contractor working on the project, and the removal contractor identification number;

(3) the type of operation: demolition or renovation;

(4) a description of the structure that includes:

(a) the size (in square feet or square meters);

(b) the number of floors;

(c) the age; and

(d) the present and prior uses;

(5) the procedures, including analytical methods, used to inspect for the presence of asbestos containing material when the asbestos project is performed in a structure subject to NESHAP;

(6) an estimate of the approximate amount of asbestos containing material to be stripped using the appropriate units;

(7) an estimate of the amount of nonfriable asbestos containing material in the affected part of the structure that will not be removed before demolition;

(8) the location and address, including building number or name and floor or room number, if appropriate, street address, city, county, state, and zip code of the structure being demolished or renovated;

(9) the scheduled starting and completion dates of asbestos removal work in a renovation or demolition, with the exception of government ordered demolitions;

(10) the beginning and ending dates of the report period for planned renovation operations;

(11) a description of procedures for handling the finding of unexpected asbestos containing material or nonfriable asbestos containing material that has become friable;

(12) a description of planned demolition or renovation work including the demolition and renovation techniques to be used and a description of the affected structural components;

(13) a description of work practices and engineering controls to be used to prevent emissions of asbestos at the demolition or renovation work site;

(14) the name and location of the waste disposal site where the asbestos waste will be deposited, including the name and telephone number of waste disposal site contact; and

(15) the name, address, person to contact, and telephone number of the waste transporter;

(16) If the structure will be demolished under an order of a state or local government agency, include in the written notification the name, title, and authority of the government representative ordering the demolition, the date the order was issued, the date the demolition was ordered to commence. Attach a copy of the order to the notification.

(17) If an emergency asbestos project will be performed, include in the written notification the date and hour the emergency occurred, a description of the event and an explanation of how the event has caused unsafe conditions or would cause equipment damage, or unreasonable financial burden.

8.5.2 Other Asbestos Projects:

A. If an asbestos project operator performs demolition

activities in a structure involving asbestos containing material in a quantity less than the NESHAP size, even if no asbestos is present, submit a written notification in accordance with Subsections R307-1-8.5.1.A, R307-1-8.5.1.B, R307-1-8.5.1.D, R307-1-8.5.1.E(1) through (8), R307-1-8.5.1.E(10), and R307-1-8.5.1.E(11) at least ten days before commencement of the demolition.

B. If demolition of a structure is ordered by a state or local government agency because the structure is unsound and in danger of imminent collapse, submit written notification in accordance with Subsections R307-1-8.5.1.A, R307-1-8.5.1.B, and R307-1-8.5.1.E as early as possible, but not later than, the following working day.

8.5.3 Change in Notification Date.

A. If a NESHAP size asbestos project, except for a planned asbestos project, will commence on a date other than the date submitted in the original written notification, notify the appropriate agency of the new starting date according to the following schedule:

(1) If the new starting date is later than the original starting date, provide notice by telephone as soon as possible before the original starting date and submit a revised notice in accordance with Section R307-1-8.5.1.B as soon as possible before, but no later than, the original starting date.

(2) If the new starting date is earlier than the original starting date,submit a written notice in accordance with Subsection R307-1-8.5.1.B at least ten working days before the NESHAP size asbestos project commences.

B. If a demolition operation as specified in Subsection R307-1-8.5.2.A commences on a date other than the date submitted in the original written notification, notify the appropriate agency at least ten working days before commencing of the demolition of the structure.

C. In no event shall an asbestos project covered by this subsection commence on a date other than the new starting date submitted in the revised written notice.

8.6 Work Practice Requirements.

8.6.1 NESHAP Size Asbestos Projects.

After September 1, 1987 each asbestos project operator conducting a NESHAP size asbestos project shall comply with the following work practice requirements:

A. General (including removal, demolition, renovation, encapsulation and enclosure)

(1) Remove friable asbestos-containing materials before commencing any activity which would break up the materials or prevent access to them for subsequent removal.

(2) Ensure that a site supervisor trained in accordance with Subsection R307-1-8.4 is responsible for the construction of the containment, supervision, and inspection of each asbestos project conducted by an asbestos project operator.

(3) Maintain a sufficient inventory of equipment and supplies at the project work site to ensure ability to continuously comply with Section R307-1-8.

(4) Provide barriers to isolate contaminated areas from uncontaminated areas. Barriers shall be constructed of polyethylene sheeting, or equivalent, attached securely in place, and sealed with waterproof tape or equivalent.

(a) Provide a worker decontamination system. Enter and leave asbestos contaminated work areas only through the worker decontamination system.

(b) Repair tears in the isolation barriers immediately.

(5) Provide protective outerwear to all asbestos workers and others entering asbestos contaminated areas.

(a) Remove protective outerwear and leave in a contaminated part of the work area, such as the equipment room, before leaving the contaminated area.

(b) Place nondisposable protective outerwear in a labeled, sealed impermeable plastic bag, or equivalent container, before removing it from the work area.

(c) Treat disposable protective outerwear as asbestos waste.

(6) Provide respiratory protection to all asbestos workers and others entering asbestos contaminated areas. Respiratory protection shall consist of a half-mask air-purifying respirator equipped with HEPA filters, or other appropriate respirator specified in OSHA 29 CFR 1926.1101(h).

(7) Display caution signs in accordance with OSHA 29 CFR 1926.1101 at all approaches to any location where airborne asbestos fiber levels can be expected to exceed background levels.

(8) Adequately wet all asbestos waste before sealing into containers for disposal.

(9) Place asbestos waste in sealed, leak-tight impermeable containers for disposal, using one of the following containment methods:

(a) If asbestos waste contains sharp edged components, use metal or fiber drums with locking-ring tops.

(b) Double polyethylene bags, each of at least 6-mil thickness and which can be securely sealed, may be used for asbestos waste, provided it does not contain sharp edged components.

(c) Large components or structural members covered or coated with friable asbestos-containing materials may be removed intact and wrapped in two layers of 6-mil polyethylene sheeting secured with tape for disposal.

(d) Alternative containment methods may be used if written approval is obtained in advance from the executive secretary.

(10) All drums, bags, and wrapped components specified in Subsection R307-1-8.6.1.A(9) shall be labeled as follows:

DANGER
CONTAINS ASBESTOS FIBERS
AVOID CREATING DUST
CANCER AND LUNG DISEASE HAZARD.

(a) The warning labels as specified above shall be printed in letters of sufficient size and contrast so as to be readily visible and legible; and

(b) for asbestos waste transported off the structure site, label all drums, bags, and wrapped components with the name of the waste generator and the location where the waste was generated.

(11) Clean asbestos contamination from the outside of disposal containers before removing them from the work area. Clean asbestos from other objects to be removed from the work area, or contain the objects to prevent release of asbestos fibers when removed from the area.

(12) Attach permanent asbestos hazard warning labels to salvaged structural components or members which are covered or coated with friable asbestos-containing materials.

(13) Filter all asbestos containing waste water to five micrometers prior to discharging to a sewer system.

(14) Apply a coating of encapsulating agent to friable asbestos-containing materials exposed but not removed during renovation, and to porous surfaces that have been stripped of asbestos-containing materials.

(15) Following asbestos abatement and before dismantling isolation barriers, drop cloths and/or at least one layer of floor and wall sheeting, perform cleanup procedures using HEPA vacuuming and wet cleaning techniques. Perform wet cleaning, using an amended water solution, followed by HEPA vacuuming after the surfaces have been allowed to dry. Repeat the sequence of wet cleaning and HEPA vacuuming until no visible asbestos residue is observed in the work area.

B. Asbestos Removal.

(1) Adequately wet all friable asbestos-containing material prior to removal.

(2) Whenever practicable, remove structural components which are coated or covered with friable asbestos-containing material intact or in large sections and carefully lower them to the floor or ground.

(3) Remove asbestos-containing material in small sections and containerize while wet. Do not allow asbestos-containing material to accumulate and become dry before containerizing.

(4) Wet structural components thoroughly with amended water prior to wrapping in polyethylene sheeting for disposal in accordance with Subsection R307-1-8.6.1.A(9)(c).

(5) Do not drop or throw asbestos-containing materials to the floor or ground level. Asbestos-containing material may be dropped to a raised scaffold or containerized at elevated levels for disposal. Drop asbestos materials removed at greater than 15 feet above the floor onto inclined chutes or scaffolding or containerize at elevated levels for eventual disposal. If friable asbestos-containing materials are removed or stripped more than 50 feet above floor or ground level, transport to the floor or ground level via dust-tight chutes or containers.

C. Renovation. Unless specifically excluded, the provisions of this section apply to encapsulation (Subsection R307-1-8.6.1.D) and enclosure (Subsection R307-1-8.6.1.E) projects as well as other renovation projects.

(1) Remove all movable objects from the work area. Perform cleaning of items and surfaces contaminated with asbestos. Cover all nonmovable objects in the work area with 4-mil polyethylene sheeting secured into place. Seal all openings between the work area and uncontaminated areas, as required in Subsection R307-1-8.6.1.A(4).

(2) Shut down and lock out all HVAC equipment servicing the work area. Seal all intake and exhaust openings and any seams in system components with 6-mil polyethylene sheeting or equivalent, and/or tape. Replace all system filters at the completion of the asbestos project and dispose of old filters as asbestos waste. Clean asbestos-contaminated ventilation system ductwork interiors.

(3) Cover floors with at least 2 layers of 6-mil polyethylene sheeting or equivalent, securely attached with waterproof duct tape or equivalent. Floor sheeting shall extend up walls at least 12 inches and be sized to minimize seams. No seams shall be located at wall/floor joints.

(4) Cover walls and other surfaces with at least 2 layers of 4-mil polyethylene sheeting or equivalent, securely attached and sealed with waterproof duct tape or equivalent. Wall sheeting shall be installed to minimize joints and shall overlap the floor sheeting at least 12 inches. No seams shall be located at wall/wall joints.

(5) Operate negative pressure ventilation units with HEPA filtration in sufficient numbers to provide one workplace air change every 15 minutes continuously from the time barrier construction is completed through the time final cleanup is completed in accordance with Subsection R307-1-8.6.1.A(15) and the barriers can be dismantled. These units shall exhaust filtered air to the outside of the building wherever practicable. Procedures for operation as detailed in EPA document No. EPA 560/5-85-024 "Guidance for Controlling Asbestos-Containing Materials in Buildings" (the purple book) Appendix J, shall be utilized.

D. Encapsulation.

(1) Prior to application of an encapsulating agent, remove loose and hanging friable asbestos-containing material in accordance with Subsection R307-1-8.6.1.B.

(2) Filler material applied to gaps in existing material shall contain no asbestos, adhere well to the substrate, and provide an adequate base for the encapsulating agent.

(3) Apply sprayed-on encapsulating agents using airless spray equipment with nozzle pressure adjusted to minimize disturbance of friable asbestos-containing materials.

(4) After encapsulation, use signs, labels, color coding, or some other mechanism to indicate the presence of encapsulated friable asbestos-containing materials.

(5) Encapsulating agents shall not be applied to friable asbestos-containing materials which are water damaged or structurally deteriorating, show poor adhesion to the surface to which they are applied, or which are in locations subject to frequent physical damage.

E. Enclosures. Enclosures constructed for the purpose of permanently containing and protecting friable asbestos-containing materials shall be specially designated by signs, labels, color coding, or some other mechanism to warn individuals who may be required to enter or disturb the enclosure of the presence of asbestos.

F. Demolition.

(1) Remove all friable asbestos-containing materials according to the requirements of Subsections R307-1-8.6.1.A (General) and R307-1-8.6.1.B (Removal) before demolition of any structure or portion of a structure which contains structural members or components composed of or covered by friable asbestos-containing material. Friable asbestos-containing materials must be removed before commencing any activity which would break up the materials or preclude access for subsequent removal.

(2) Before beginning asbestos removal seal off all doors, windows, floor drains, vents, and other openings to the outside of the building, and to areas within the building that do not contain asbestos materials, with 6-mil polyethylene sheeting and waterproof tape or equivalent that is acceptable to the executive secretary.

(3) If a structure is to be partially demolished, HVAC equipment in the demolition area or passing through it but servicing areas of the building which will remain, shall be shut down and locked out and thoroughly sealed with 6-mil polyethylene sheeting and waterproof tape.

(4) Use a disposable drop cloth to catch asbestos waste if the physical condition of the ground or other collection surface is such that it cannot be cleaned of visible asbestos residue. Dispose of the drop cloth as asbestos waste.

(5) Removal of friable asbestos-containing material prior to demolition is not required if:

(a) The asbestos is encased in concrete or similar material, or

(b) A structure is being demolished under an order of a state or local governmental agency issued because the structure is unsound and in danger of imminent collapse.

(6) If friable asbestos-containing material is not removed before demolition, adequately wet the portion of the structure containing the asbestos before demolition, and keep adequately wet during subsequent demolition, handling, and disposal.

G. Outdoor Work.

(1) The provisions of Subsections R307-1-8.6.1.A and R307-1-8.6.1.B apply to asbestos projects conducted outdoors, with the following exceptions:

(a) Construction of barriers to isolate asbestos projects performed outdoors is not required if friable asbestos-containing materials are adequately wetted during removal, handling, and disposal.

(b) In lieu of constructing a worker decontamination system, workers' outerwear may be removed, wet cleaned or HEPA vacuumed before the workers leave the work area. Outerwear removed for cleaning or disposal shall be transported from the work area in a sealed, impermeable plastic bag or equivalent container labeled in accordance with Subparagraph 8.6.1.A(10).

(2) Access to the work area shall be restricted by use of a physical obstruction to limit traffic through the area.

(3) A disposable drop cloth shall be used to catch asbestos waste if the physical condition of the ground or other collection surface is such that it cannot be cleaned of visible asbestos residue. Dispose of the drop cloth as asbestos waste.

H. Disposal.

(1) Transport and dispose of asbestos waste in a manner that will not permit the release of asbestos fibers into the air.

(2) Dispose of asbestos waste at a location approved for handling asbestos waste by the appropriate authority having jurisdiction over the chosen landfill.

(3) Ensure that friable asbestos waste not containerized in accordance with Subsection R307-1-8.6.1.A(9) is buried immediately upon deposit at the disposal site.

(4) If asbestos waste is transported by vehicle to a disposal site, mark the transport vehicle with clearly visible signs during the loading and unloading of the asbestos waste. The signs shall be securely attached and displayed in such a manner and location that a person can easily read the legend. The signs shall conform to the requirements specified in 29 CFR 1910.145(d)(4).

(5) For off structure site disposal, provide a copy of the waste shipment record as specified under Subsection R307-1-8.7.1.A(5), to the disposal site owner or operator at the same time as the asbestos waste is delivered to the disposal site.

I. Planned Asbestos Projects: Planned asbestos projects for which a NESHAP notification is required, but which consist of individual, nonscheduled abatements each of which is smaller than a NESHAP sized asbestos project, occurring during an extended period of time, may be conducted according to the provisions of Subsection R307-1-8.6.2 below if approved by the executive secretary.

8.6.2 Work Practices for Other Asbestos Projects.

After September 1, 1987 each asbestos project operator shall comply with the following work practices:

A. Any asbestos project operator conducting a less than NESHAP size asbestos project shall take precautions to prevent the release of asbestos fibers to the environment. Precautions shall include but not be limited to the following measures:

(1) Construct barriers to contain asbestos fibers released within the work area.

(2) Adequately wet friable asbestos-containing materials with amended water prior to and during removal. Keep the asbestos-containing materials adequately wet until containerized.

(3) Use a disposable drop cloth to collect asbestos waste if the physical condition of the floor or collection surface is such that the work area cannot be cleaned of visible asbestos residue. Dispose of the drop cloth as asbestos waste.

(4) Glove bags may be used instead of the barriers and drop cloths specified in Subsections R307-1-8.6.2.A(1) and R307-1-8.6.2.A(3).

(5) Use HEPA vacuum equipment and wet cleaning techniques to clean up the work area until no visible asbestos residue remains. Perform cleanup before dismantling asbestos fiber containment barriers.

(6) Promptly place asbestos waste in appropriately labeled sealed impermeable containers (polyethylene sheeting, bags and/or fiber or metal drums).

(7) Clean visible asbestos residue from the outside of containers before removing them from the work area. Clean asbestos off other objects to be removed from the work area, or contain them to prevent release of asbestos fibers when removed from the area.

(8) Prevent the discharge of visible amounts of asbestos to any sewer.

(9) Apply an encapsulating agent to friable asbestos-containing materials exposed but not removed during renovation, and to porous surfaces from which friable asbestos-containing materials have been stripped.

(10) Remove, wet clean, or HEPA vacuum workers' outerwear before workers leave the work area. Seal outerwear removed in the work area into impermeable plastic bags, labeled in accordance with Subsection R307-1-8.6.1.A(10), before taking away from the work area. Treat disposable outerwear as asbestos waste.

(11) Transport and dispose of asbestos waste as specified under Subsection R307-1-8.6.1(H).

(12) If removal of friable asbestos-containing materials is not practicable before demolition, adequately wet the asbestos materials or the structure containing the asbestos materials before demolition and keep it adequately wet during subsequent

handling and disposal.

(13) Permanently attach asbestos hazard warning labels to salvaged structural components which are covered or coated with friable asbestos-containing materials.

B. Construction of barriers to contain asbestos fibers is not required for asbestos projects conducted outdoors if the friable asbestos-containing material is adequately wetted and access to the work area is limited to asbestos workers only.

C. Asbestos Inspection.

Persons taking samples for the purpose of identification of asbestos-containing materials shall comply with the following requirements:

(1) Minimize contamination of the surrounding area by use of a sampling method which will minimize disturbance of friable materials, such as sampling at places where the material is exposed or damaged, wetting the material to be sampled, or using a drop cloth or other provision for catching gross contamination.

(2) Promptly clean the sampling area using wet methods or HEPA vacuuming so that no visible friable materials remain.

(3) Apply an encapsulating agent or otherwise seal friable materials exposed during sampling.

(4) Place samples in containers and tightly seal them. Wet wipe the exterior surfaces of the containers. Place sample containers in plastic bags.

(5) After sample collection, place protective clothing, wet wipes, rags, cartridge filters, drop cloths, and other disposable equipment in a 6-mil polyethylene bag that is labeled as specified under Subsection R307-1-8.6.1.A(10).

(6) If laboratory analysis reports one or more samples as asbestos containing material, dispose of all material described in Subsection R307-18.6.2.C(5) as asbestos waste at a state approved landfill.

(7) Ensure that samples are analyzed by a method approved by the executive secretary.

(8) Any person required to be certified as an inspector in training under Subsection R307-1-8.3 shall work under the direct supervision of an inspector certified in accordance with Subsection R307-1-8.3.5.A.

8.6.3 Asbestos Projects Performed in a Single Family Residential Dwelling:

Persons who perform an asbestos project in a single family residential dwelling which is his primary residence, shall comply with Subsections R307-1-8.6.1.A(9), R307-1-8.6.1.A(10), R307-1-8.6.1.H(1), and R307-1-8.6.1.H(2).

8.6.4 Alternative Procedures.

The executive secretary may approve in writing an alternative procedure for control of emissions from an asbestos project provided that:

A. the asbestos project operator submits the alternative procedure to the executive secretary in writing;

B. the operator demonstrates to the satisfaction of the executive secretary that compliance with the prescribed procedures is not practical or not feasible or that the proposed alternative procedures provide equivalent control of asbestos; and

C. the executive secretary determines that the procedure will minimize the emission of asbestos fibers.

8.6.5 Asbestos Projects Subject to TSCA Title II.

Asbestos project operators or other persons who perform an asbestos project subject to TSCA Title II must ensure that at least one certified site supervisor is present at the work site at all times while the asbestos project is in progress. Asbestos workers must have access to certified supervisors throughout the duration of the asbestos project.

8.6.6 Activities Subject to Certification Requirements.

A. Each person required under Subsection R307-1-8.3 to have TSCA accreditation and to obtain certification shall be in physical possession of their certification card whenever performing work for which the certification is required.

B. Any person who does not have current, unexpired certification shall not perform work for which TSCA accreditation and certification under Subsection R307-1-8.3 is required.

8.7 Records.

8.7.1 Records Required.

A. Certified asbestos project contractors shall maintain records of all asbestos projects that he performs and shall make these records available to the executive secretary upon request. The records shall be retained for at least two years. Information recorded shall include the following:

(1) names and social security numbers of the asbestos workers and supervisors who performed the project;

(2) location and description of the project and amount of friable asbestos-containing material removed or area encapsulated or enclosed;

(3) starting and completion dates of the asbestos project;

(4) summary of the procedures used to comply with applicable requirements including copies of all notifications; and

(5) waste shipment records maintained in accordance with 40 CFR Part 61, Subpart M, NESHAP.

B. Each person conducting a training course approved in accordance with Subsection R307-1-8.4.5 shall maintain records of:

(1) training course materials: copies of all course materials;

(2) instructor qualifications: instructor resumes, documents from the executive secretary approving each instructor, and the instructors who taught each particular course and the dates the instructor taught;

(3) examinations: document that each person who receives initial accreditation has achieved a passing score on the examination, the date of the examination, the training course and discipline for which the examination was given, the name of the person who proctored the exam, a copy of the exam, and the name and test score of each person taking the exam;

(4) accreditation certificates: document all persons who have been awarded certificates, their certificate numbers, their accredited disciplines, training and expiration dates, and the training location. The records must be maintained in a manner that allows verification by telephone.

(5) records access: records required in Subsection R307-1-8.7.1 shall be made available to the executive secretary upon request. The records shall be retained for at least three years. If a course provider ceases to provide training, the course provider shall contact the executive secretary and give the executive secretary the opportunity to take possession of all

asbestos training records.

8.8 Implementation of TSCA Title II.

8.8.1 Adoption of TSCA Title II.

A. The provisions of TSCA Title II are adopted and incorporated herewith by reference. The accreditation provisions of the Model Accreditation Plan are also adopted and incorporated herewith by reference as mandatory requirements.

B. Implementation of the provisions 40 CFR Part 763, Subpart E, except for the Model Accreditation Plan, shall be limited to those provisions for which the EPA has waived its requirements in accordance with 40 CFR Subpart 763.98, Waiver; delegation to State, as published at 52 FR 41826, (October 30, 1987).

8.8.2 Review and Disapproval of Management Plans.

A. Unless a deferral request under Subsection R307-1-8.8.2.B has been approved by the executive secretary, each LEA shall submit the asbestos management plans required by AHERA to the executive secretary on or before October 12, 1988. A "Required Elements for LEA Asbestos Management Plan" shall be completely filled out and submitted by the LEA with each management plan.

B. The executive secretary may approve a request by an LEA for deferral of submittal of a management plan until May 9, 1989 if the LEA submits a complete request for deferral as required by AHERA. The executive secretary shall approve or disapprove a deferral request, and explain why any request was disapproved, within 30 days of receipt of a deferral request.

C. The executive secretary shall review each management plan and return comments to the LEA within 90 days of receipt of the plan. The executive secretary may disapprove a management plan if the plan does not meet the requirements of AHERA or if the "Required Elements for LEA Asbestos Management Plans" form is not completely filled out and submitted with the plan.

D. The LEA shall revise any management plan disapproved by the executive secretary and resubmit the plan within 30 days after receipt of a notice of disapproval. The LEA may request that the Executive Secretary extend the 30-day plan revision period to 90 days, provided the plan is revised and submitted before July 9, 1989.

KEY: air pollution, motor vehicles, major sources*
January 8, 1998 19-2-104
Notice of Continuation June 2, 1997 19-2-109
19-2-124

R307. Environmental Quality, Air Quality.
R307-2. Utah State Implementation Plan.
R307-2-1. Incorporation by Reference.

To meet requirements of the Federal Clean Air Act, the Utah State Implementation Plan must be incorporated by reference into these rules. Copies of the Utah State Implementation Plan are available at the Utah Department of Environmental Quality, Division of Air Quality.

R307-2-2. Section I, Legal Authority.

The Utah State Implementation Plan, Section I, Legal Authority, as most recently amended by the Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-2-3. Section II, Review of New and Modified Air Pollution Sources.

The Utah State Implementation Plan, Section II, Review of New and Modified Air Pollution Sources, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-2-4. Section III, Source Surveillance.

The Utah State Implementation Plan, Section III, Source Surveillance, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-2-5. Section IV, Ambient Air Monitoring Program.

The Utah State Implementation Plan, Section IV, Ambient Air Monitoring Program, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-2-6. Section V, Resources.

The Utah State Implementation Plan, Section V, Resources, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-2-7. Section VI, Intergovernmental Cooperation.

The Utah State Implementation Plan, Section VI, Intergovernmental Cooperation, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-2-8. Section VII, Prevention of Air Pollution Emergency Episodes.

The Utah State Implementation Plan, Section VII, Prevention of Air Pollution Emergency Episodes, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-2-9. Section VIII, Prevention of Significant Deterioration.

The Utah State Implementation Plan, Section VIII, Prevention of Significant Deterioration, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-2-10. Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter, as most recently amended by the Utah Air Quality Board

on February 5, 1997, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-2-11. Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-2-12. Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide, as most recently amended by the Utah Air Quality Board on January 7, 1998, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-2-13. Section IX, Control Measures for Area and Point Sources, Part D, Ozone.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part D, Ozone, as most recently amended by the Utah Air Quality Board on January 8, 1997, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-2-14. Section IX, Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-2-15. Section IX, Control Measures for Area and Point Sources, Part F, Lead.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part F, Lead, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-2-16. Section IX, Control Measures for Area and Point Sources, Part G, Fluoride.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part G, Fluoride, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-2-17. Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits, as most recently amended by the Utah Air Quality Board on February 5, 1997, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-2-18. Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability, as most recently amended by the Utah Air Quality Board on February 5, 1997, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-2-19. Section XI, Other Control Measures for Mobile Sources.

The Utah State Implementation Plan, Section XI, Other Control Measures for Mobile Sources, as most recently amended by the Utah Air Quality Board on September 30, 1993, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-2-20. Section XII, Involvement.

The Utah State Implementation Plan, Section XII, Involvement, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-2-21. Section XIII, Analysis of Plan Impact.

The Utah State Implementation Plan, Section XIII, Analysis of Plan Impact, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-2-22. Section XIV, Comprehensive Emission Inventory.

The Utah State Implementation Plan, Section XIV, Comprehensive Emission Inventory, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-2-23. Section XV, Utah Code Title 19, Chapter 2, Air Conservation Act.

Section XV of the Utah State Implementation Plan contains Utah Code Title 19, Chapter 2, Air Conservation Act.

R307-2-24. Section XVI, Public Notification.

The Utah State Implementation Plan, Section XVI, Public Notification, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-2-25. Section XVII, Visibility Protection.

The Utah State Implementation Plan, Section XVII, Visibility Protection, as most recently amended by the Utah Air Quality Board on March 26, 1993, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-2-26. Section XVIII, Demonstration of GEP Stack Height.

The Utah State Implementation Plan, Section XVIII,

Demonstration of GEP Stack Height, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-2-27. Section XIX, Small Business Assistance Program.

The Utah State Implementation Plan, Section XIX, Small Business Assistance Program, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-2-29. Section XXI, Diesel Inspection and Maintenance Program.

The Utah State Implementation Plan, Section XXI, Diesel Inspection and Maintenance Program, as most recently amended by the Utah Air Quality Board on July 12, 1995, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-2-30. Section XXII, General Conformity.

The Utah State Implementation Plan, Section XXII, General Conformity, as adopted by the Utah Air Quality Board on October 4, 1995, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-2-31. Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County, as most recently amended by the Utah Air Quality Board on February 5, 1997, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-2-32. Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County, as most recently amended by the Utah Air Quality Board on February 5, 1997, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-2-33. Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County, as most recently amended by the Utah Air Quality Board on February 5, 1997, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-2-34. Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County, as most recently amended by the Utah Air Quality Board on February 5, 1997, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

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R307. Environmental Quality, Air Quality.
R307-8. Oxygenated Gasoline Program.
R307-8-1. Definitions.

The following definitions apply only to R307-8.

"Averaging period" is the control period and means the period of time over which all gasoline sold or dispensed for use in a control area by any control area responsible party must comply with the average oxygen content standard.

"Blender control area responsible party (Blender CAR)" means a person who owns oxygenated gasoline which is sold or dispensed from a control area oxygenate blending installation.

"Carrier" means any person who transports, stores or causes the transportation or storage of gasoline at any point in the gasoline distribution network, without taking title to or otherwise having ownership of the gasoline, and without altering the quality or quantity of the gasoline.

"Control area" means a geographic area in which only gasoline under the oxygenated gasoline program may be sold or dispensed during the control period, with boundaries determined in accordance with Section 211(m) of the Clean Air Act.

"Control area oxygenate blending installation" means any installation or truck at which oxygenate is added to gasoline or gasoline blendstock which is intended for use in any control area, and at which the quality or quantity of the gasoline or gasoline blendstock is not otherwise altered, except through the addition of deposit-control additives.

"Control area responsible party (CAR)" means a person who owns oxygenated gasoline which is sold or dispensed from a control area terminal.

"Control area terminal" means a terminal which is capable of receiving gasoline in bulk, i.e., by pipeline, marine vessel or barge, and/or at which gasoline is altered either in quantity or quality, excluding the addition of deposit control additives. Gasoline which is intended for use in any control area is sold or dispensed into trucks at these control area terminals.

"Control period" means November 1 through the last day of February, during which time only oxygenated gasoline may be sold and dispensed in any control area.

"Destination" means:

A. for all control periods prior to the trigger date:

(1) the Provo/Orem Metropolitan Statistical Area (MSA), all of Utah County or

(2) anywhere except Utah County; and

B. for all control periods subsequent to the trigger date:

(1) Utah County, the Provo/Orem Metropolitan Statistical Area,

(2) Weber County, or

(3) anywhere except Utah County and Weber County.

"Distributor" means any person who transports or stores or causes the transportation or storage of gasoline at any point between any gasoline refiner's installation and any retail outlet

or wholesale purchaser-consumer's installation. A distributor that alters the oxygen content of the gasoline which is intended for use in any control area is a Blender CAR.

"Gasoline" means any fuel sold for use in motor vehicles and motor vehicle engines, and commonly or commercially known or sold as gasoline.

"Non-oxygenated gasoline" means any gasoline which does not meet the definition of oxygenated gasoline.

"Gasoline blendstock" means a hydrocarbon material which by itself does not meet specifications for finished gasoline, but which can be blended with other components, including oxygenates, to produce a blended gasoline fully meeting the American Society for Testing and Materials (ASTM) and/or state specifications.

"Oxygen content of gasoline blends" means percentage of oxygen by weight contained in a gasoline blend, based upon its percentage of oxygenate by volume, excluding denaturants and other non-oxygen-containing compounds. All measurements shall be adjusted to 60 degrees Fahrenheit.

"Oxygenate" means any substance, which when added to gasoline, increases the amount of oxygen in that gasoline blend. Lawful use of any combination of these substances requires that they be "Substantially Similar" as provided for under Section 211(f)(1) of the Clean Air Act, or be permitted under a waiver granted by the Administrator of the Environmental Protection Agency under the authority of Section 211(f)(4) of the Clean Air Act.

"Oxygenate blender" means a person who owns, leases, operates, controls, or supervises a control area oxygenate blending installation.

"Oxygenated gasoline" means any gasoline, which contains at least 2.0%, or 2.6% if triggered as specified in R307-8-3.1.C, oxygen by weight, that was produced through the addition of an oxygenate to a gasoline and has been included in the oxygenated gasoline program accounting by a control area responsible party and which is intended to be sold or dispensed for use in any control area. Notwithstanding the foregoing, if the Board determines that the 2.0%, or 2.6% if triggered as specified in R307-8-3.1.C, oxygen requirement will prevent or interfere with attainment of the PM_{10} NAAQS and the State requests and is granted a waiver from the Administrator of the Environmental Protection Agency under Section 211 of the Clean Air Act, the waiver amount granted by the Administrator of the Environmental Protection Agency, shall apply. Oxygenated gasoline containing lead is required to conform to the same waiver conditions or "substantially similar" ruling as unleaded gasoline as described in the definition of oxygenate.

"Refiner" means any person who owns, leases, operates, controls, or supervises a refinery which produces gasoline for use in a control area during the applicable control period.

"Refinery" means a plant at which gasoline is produced.

"Reseller" means any person who purchases gasoline and resells or transfers it to a retailer or a wholesale purchaser-consumer.

"Retail outlet" means any establishment at which gasoline is sold or offered for sale to the ultimate consumer for use in motor vehicles.

"Retailer" means any person who owns, leases, operates, controls, or supervises a retail outlet.

"Terminal" means an installation at which gasoline is sold, or dispensed into trucks for transportation to retail outlets or wholesale purchaser-consumer facilities.

"Trigger date" means the date on which is triggered the Contingency Action Level specified in Section IX.C.8.h of the State Implementation Plan.

"Wholesale purchaser-consumer" means any organization that:

A. is an ultimate consumer of gasoline;

B. purchases or obtains gasoline from a supplier for use in motor vehicles; and

C. receives delivery of that product into a storage tank of at least 550-gallon capacity substantially under the control of that organization.

"Working day" means Monday through Friday, excluding observed federal and Utah state holidays.

R307-8-2. Applicability and Control Period Start Dates.

1. Unless waived under authority of Section 211(m)(3) of the Clean Air Act by the Administrator of the Environmental Protection Agency, R307-8 is applicable in Utah and Weber Counties.

2. The first control period for areas for which R307-8 is applicable begins:

A. November 1, 1992, for the entire Provo-Orem Metropolitan Statistical Area which includes all of Utah County; and

B. November 1 following the trigger date for Weber County.

R307-8-3. Average Oxygen Content Standard.

1. All gasoline sold or dispensed during the control period, for use in each control area, by each CAR or Blender CAR as defined in Section R307-8-1, shall be blended for each averaging period to contain an average oxygen content of not less than 2.7% by weight, except that:

A. if the Board determines that the 2.7% oxygen requirement will prevent or interfere with attainment of the PM_{10} National Ambient Air Quality Standards and the State requests and is granted a waiver from the Administrator of the Environmental Protection Agency under Section 211 of the Clean Air Act, the waiver amount granted by the Administrator of the Environmental Protection Agency, shall apply;

B. if the enhanced inspection and maintenance program specified in Section IX, Part C.6.j(2)(b) of the State Implementation Plan is not implemented by January 1,1996 (or if an equivalent automotive improvement program is not implemented that results in emissions factors equal to or less than the emission factors in Table IX.C.23 of the State Implementation Plan), all gasoline sold or dispensed during the control period beginning November 1, 1996, and subsequent control periods, for use in the Provo/Orem MSA, by each CAR or Blender CAR as defined in Section R307-8-1, shall be blended to contain an average oxygen content of not less than 3.1% by weight until the next full control period following one year after the implementation of an enhanced inspection and maintenance program with mobile source emission factors equal to or less than every emission factor in the matrix in Table IX.C.23 of the State Implementation Plan and the enhanced

inspection and maintenance performance standards of 40 CFR 51.351 or until the next full control period following implementation of a program that would result in emission factors equal to or less than the mobile source emission factors in the matrix contained in Table IX.C.23 of the State Implementation Plan;

C. if triggered as a contingency measure, as specified in Section IX, Part C.6.f of the State Implementation Plan, all gasoline sold or dispensed during the control period for use in the Provo/Orem MSA, by each CAR or Blender CAR as defined in Section R307-8-1, shall be blended to contain an average oxygen content of not less than 3.1% by weight until it is shown to be unnecessary in the maintenance demonstration required by the Clean Air Act or until it is replaced with other control measures in a state Implementation Plan revision that demonstrates attainment with the National Ambient Air Quality Standard.

2. The averaging period, over which all gasoline sold or dispensed in the control area is to be averaged, shall be equal to the control period.

3. All gasoline, both leaded and unleaded, shall be blended in compliance with 40 CFR Part 79 (1991) - Registration of Fuels and Fuel Additives and 40 CFR Part 80 (1991) - Regulation of Fuels and Fuel Additives.

4. Any oxygenated gasoline blended under a "Substantially Similar" ruling as provided for under Section 211(f)(1) of the Clean Air Act will be permitted to have an oxygen content of up to 2.9% oxygen by weight for blending tolerance purposes. This blending allowance does not apply to oxygenates waived to oxygen levels above 2.7% oxygen by weight under the authority of Section 211(f)(4) of the Clean Air Act.

5. Oxygenates added to gasoline blended under a "Substantially Similar" ruling as provided for under Section 211(f)(1) of the Clean Air Act in excess of 2.7% oxygen by weight may not be included in the compliance calculations specified in Subsection R307-8-5.2.

6. Oxygen content shall be determined in accordance with Section R307-8-4.

R307-8-4. Sampling, Testing, and Oxygen Content Calculations.

1. For the purpose of determining compliance with the requirements of R307-8, the oxygen content of gasoline shall be determined by one or both of the two following methods.

A. Volumetric Method. Oxygen content may be calculated by the volumetric method specified in the Environmental Protection Agency Guidelines for Oxygenated Gasoline Credit Programs under Section 211(m) of the Clean Air Act as Amended - Supplementary Information - Oxygen Content Conversions, published in the Federal Register on October 20, 1992.

B. Chemical Analysis Method.

(1) Use the sampling methodologies detailed in 40 CFR Part 80 (1993), Appendix D, to obtain a representative sample of the gasoline to be tested;

(2) Determine the oxygenate content of the sample by use of:

(a) the test method specified in ASTM Designation D4815-93, Testing Procedures--Method--ASTM Standard Test Method for Determination of C1 to C4 Alcohols and MTBE in Gasoline by Gas Chromatography,

(b) the test method specified in Appendix C of Environmental Protection Agency Guidelines for Oxygenated Gasoline Credit Programs under Section 211(m) of the Clean Air Act as Amended - Test Procedure Test for the Determination of Oxygenates in Gasoline as published in the Federal Register on October 20, 1992, or

(c) an alternative test method approved by the executive secretary.

(3). Calculate the oxygen content of the gasoline sampled by multiplying the mass concentration of each oxygenate in the gasoline sampled by the oxygen molecular weight contribution of the oxygenate set forth in Subsection R307-8-4.3.

2. All volume measurements required in Section R307-8-4 shall be adjusted to 60 degrees Fahrenheit.

3. For the purposes of R307-8, the oxygen molecular weight contributions and specific gravities of oxygenates currently approved for use in the United States by the U.S. Environmental Protection Agency are the following:

TABLE 1

Specific Gravity and Weight Percent Oxygen of Common Oxygenates

oxygenate	weight fraction oxygen	specific gravity at 60 degrees F
ethyl alcohol	0.3473	0.7939
normal propyl alcohol	0.2662	0.8080
isopropyl alcohol	0.2662	0.7899
normal butyl alcohol	0.2158	0.8137
isobutyl alcohol	0.2158	0.8058
secondary butyl alcohol	0.2158	0.8114
tertiary butyl alcohol	0.2158	0.7922
methyl tertiary-butyl ether (MTBE)	0.1815	0.7460
tertiary amyl methyl ether (TAME)	0.1566	0.7752
ethyl tertiary-butyl ether (ETBE)	0.1566	0.7452

4. Sampling, testing, and oxygen content calculation records shall be maintained for not less than two years after the end of each control period for which the information is required.

5. Every refiner must determine the oxygen content of all gasoline produced for use in a control area by use of the methodology specified in Subsection R307-8-4.1. Documentation shall include the percent oxygen by weight, the type of oxygenate, purity of the oxygenate, and the percent oxygenate by volume.

R307-8-5. Alternative Compliance Options.

1. Each CAR or Blender CAR shall comply with the standard specified in Section R307-8-3 by means of the method set forth in either Subsection R307-8-5.2 or Subsection R307-8-5.3.

2. Compliance calculation on average basis.

A. To determine compliance with the standard specified in Section R307-8-3, the CAR or blender CAR shall, for each averaging period and for each control area:

(1) Calculate the total volume of gasoline sold or dispensed, not including volume dispensed or sold to another CAR or Blender CAR, for use in the control area which is the sum of:

(a) the volume of each separate batch or truckload of oxygenated gasoline that is sold or dispensed;

(b) minus the volume of each separate batch or truckload of oxygenated gasoline that is sold or dispensed for use in a different control area;

(c) minus the volume of each separate batch or truckload of oxygenated gasoline that is sold or dispensed for use in any non-control area.

(2) Calculate the required total oxygen credit units. Multiply the total volume in gallons of oxygenated gasoline sold or dispensed for use in the control area, as determined by Subsection R307-8-5.2.A(1), by the oxygen content standard specified in R307-8-3.1.

(3) Calculate the actual total oxygen credit units generated. The actual total oxygen credit units generated is the sum of the volume of each batch or truckload of oxygenated gasoline that was sold or dispensed for use in the control area, as determined by Subsection R307-8-5.2.A(1), multiplied by the actual oxygen content by weight percent associated with each batch or truckload.

(4) Calculate the adjusted actual total oxygen credit units. The adjusted actual total oxygen content units is the sum of the actual total oxygen credit units generated, as determined by Subsection R307-8-5.2.A(3);

(a) plus the total oxygen credit units purchased or acquired through trade; and

(b) minus the total oxygen credit units sold or given away through trade.

(5) Compare the adjusted actual total oxygen credit units with the required total oxygen credit units. If the adjusted actual total content oxygen credit units is greater than or equal to the required total oxygen credit units, then the standard in Section R307-8-3 is met. If the adjusted actual total oxygen credit units is less than the required total oxygen credit units, then the purchase of oxygen credit units is required in order to achieve compliance.

(6) In transferring oxygen credit units, the transferor shall provide the transferee with the volume and oxygen content by weight percent of the gasoline associated with the credits.

B. To determine the oxygen credit units associated with each batch or truck load of oxygenated gasoline sold or dispensed into the control area, use the running weighted oxygen content (RWOC) of the tank from which and at the time the batch or truckload was received (see Subsection R307-8-5.2.C below). In the case of batches or truckloads of gasoline to which oxygenate was added outside of the terminal storage tank from which it was received, use the weighted average of the RWOC and the oxygen content added as a result of the volume of the additional oxygenate added.

C. Running weighted oxygen content. The RWOC accounts for the volume and oxygen content of all gasoline, including transfers to or from another CAR or Blender CAR, which enters or leaves a terminal storage tank, and the oxygen contribution of all oxygenates which are added to the tank. The RWOC must be calculated each time gasoline enters or leaves the tank or whenever oxygenates are added to the tank. The RWOC is calculated weighing the following:

(1) the volume and oxygen content by weight percent of the gasoline in the storage tank at the beginning of the averaging period;

(2) the volume and oxygen content by weight percent of gasoline entering the storage tank;

(3) the volume and oxygen content by weight percent of gasoline leaving the storage tank; and

(4) the volume, type, purity and oxygen content by weight percent of the oxygenates added to the storage tank.

D. Credit transfers. Credits may be used in the compliance calculation in Subsection R307-8-5.2.A.(1), provided that:

(1) the credits are generated in the same control area as they are used, i.e., no credits may be transferred between nonattainment areas;

(2) the credits are generated in the same averaging period as they are used;

(3) the ownership of credits is transferred only between CARs or Blender CARs registered under the averaging compliance option specified in R307-8-7;

(4) the credit transfer agreement is made no later than 30 working days, as defined in R307-8-1, after the final day of the averaging period in which the credits are generated; and

(5) the credits are properly created.

E. Improperly created credits.

(1) No party may transfer any credits to the extent such a transfer would result in the transferor having a negative credit balance at the conclusion of the averaging period for which the credits were transferred. Any credits transferred in violation of this paragraph are improperly created credits.

(2) Improperly created credits may not be used, regardless of a credit transferee's good faith belief that the transferee was receiving valid credits.

3. Compliance calculation on a per gallon basis. Each gallon of gasoline sold or dispensed by a CAR or Blender CAR for use within each control area during the averaging period as defined in Subsection R307-8-1 shall have an oxygen content of at least the average oxygen content standard specified in R307-8-3.1. In addition, the CAR or Blender CAR is prohibited from selling oxygen credits based on gasoline for which compliance is calculated under this alternative per-gallon method.

R307-8-6. Minimum Oxygen Content.

1. Any gasoline which is sold or dispensed by a CAR, Blender CAR, carrier, distributor, or reseller for use within a control area, as defined in Subsection R307-8-1, during the control period, shall contain not less than 2.0%, or 2.6% if triggered as specified in R307-8-3.1.C, oxygen by weight percent, unless it is sold or dispensed to another registered CAR or Blender CAR. This requirement shall begin five working days, as defined in Section R307-8-1, before the applicable control period and shall apply until the end of that period.

2. This requirement shall apply to all parties downstream of the CAR or Blender CAR. Any gasoline which is offered for sale, sold or dispensed to an ultimate consumer within a control area, as defined in Subsection R307-8-1, shall not contain less than 2.0%, or 2.6% if triggered as specified in R307-8-3.1.C, oxygen by weight. This requirement shall apply during the entire applicable control period.

3. Every refiner must determine the oxygen content of all gasoline produced by use of the methodologies as described in Section R307-8-4. This determination shall include the oxygen content by weight percent, the type of oxygenate, and percent oxygenate by volume.

R307-8-7. Registration.

1. All persons who sell or dispense gasoline directly or indirectly to persons who sell or dispense to ultimate consumers in a control area, including CARs, Blender CARs, carriers, resellers, and distributors, shall petition the executive secretary for registration not less than one month in advance of such sales or transfers of gasoline into the control area.

2. This petition for registration shall be on forms prescribed by the executive secretary and shall include the following information:

A. the name and business address of the CAR, Blender CAR, carrier, reseller, or distributor;

B. in the case of a CAR, the address and physical location of each of the control area terminals from which the CAR operates;

C. in the case of a Blender CAR, the address and physical location of each control area oxygenate blending installation which is owned, leased, operated, or controlled, or supervised by a Blender CAR; and

D. the address and physical location where documents which are required to be retained by R307-8 shall be kept.

3. If the registration information previously supplied by a registered party becomes incomplete or inaccurate, that party shall submit updated registration information to the executive secretary within 30 working days as defined in R307-8-1.

4. No person shall participate in the oxygenated gasoline program as a CAR, Blender CAR, carrier, reseller, or distributor until such person has been notified by the executive secretary that such person has been registered as a CAR or Blender CAR, carrier, reseller, or distributor. Registration shall be valid for the time period specified by the executive secretary. The executive secretary shall issue each CAR, Blender CAR, carrier, reseller, or distributor a unique identification number within 30 working days as defined in R307-8-1, of the petition for registration.

R307-8-8. Recordkeeping and Reporting.

1. Records. All parties in the gasoline distribution network, as described below, shall maintain records containing compliance information enumerated or described below. These records shall be retained by the regulated parties for a period of two years after the end of each control period for which the information is required.

A. Refiners. Refiners shall, for each separate quantity of gasoline produced or imported for use in a control area during a control period, maintain records containing the following information:

(1) results of the tests utilized to determine the types of oxygenates and percent by volume;

(2) oxygenate content by volume;

(3) oxygen content by weight percent;

(4) total volume of gasoline; and

(5) the name and address of the party to whom each separate quantity of oxygenated gasoline was sold or transferred.

B. Control area terminal operators. Persons who own, lease, operate or control gasoline terminals which serve control areas, or any truck- or terminal-lessee who subleases any portion of a leased tank or terminal to other persons, shall maintain records containing the following information:

(1) the owner of each batch of gasoline handled by each regulated installation if known, or the storage customer of record;

(2) volume of each batch or truckload of gasoline going into or out of the terminal;

(3) for all batches or truckloads of gasoline leaving the terminal, the RWOC of the batch or truckload;

(4) type of oxygenate, purity, and percentage by volume if available;

(5) oxygen content by weight percent of all batches or truckloads received at the terminal;

(6) destination, as defined in R307-8-1, of each tank truck sale or batch of gasoline as declared by the purchaser of the gasoline;

(7) the name and address of the party to whom the gasoline was sold or transferred and the date of the sale or transfer, and

(8) the results of the tests for oxygenates, if performed, of each sale or transfer, and who performed the tests.

C. CARs and Blender CARs. Each CAR and Blender CAR must maintain records containing the information listed in Subsection R307-8-8.1.B, plus the following information:

(1) CAR or Blender CAR identification number;

(2) the name and address of the person from whom each shipment of gasoline was received, and the date when it was received;

(3) data on each shipment of gasoline received, including:

(a) the volume of each shipment;

(b) type of oxygenate or oxygenates, and percentage by volume; and

(c) oxygen content by weight percent;

(4) the volume of each receipt of bulk oxygenates;

(5) the name and address of the parties from whom bulk oxygenate was received;

(6) the date and destination, as defined in R307-8-1, of each sale of gasoline;

(7) data on each shipment of gasoline sold or dispensed including:

(a) the volume of each shipment;

(b) type of oxygenate, and percentage by volume, and

(c) oxygen content by weight percent;

(8) documentation of the results of all tests done regarding the oxygen content of gasoline;

(9) the names, addresses and CAR or Blender CAR identification numbers of the parties to whom any gasoline was sold or dispensed, and the dates of these transactions; and

(10) in the case of CARs or Blender CARs that elect to comply with the average oxygen content standard specified in Section R307-8-3, by means of the compliance option specified in Subsection R307-8-5.2, must also maintain records containing the following information:

(a) records supporting and demonstrating compliance with the averaging standard specified in Section R307-8-3; and

(b) for any credits bought, sold, traded, or transferred, the dates of the transactions, the names, addresses and CAR or Blender CAR numbers of the CARs and Blender CARs involved in the individual transactions, and the amount of credits (oxygen content by weight percent and volume of gasoline) transferred. Any credits transferred must be accompanied by a demonstration of how those credits were

calculated. Adequate documentation that both parties have agreed to all credit transfers within 30 working days, as defined in Section R307-8-1, following the close of the averaging period must be included;

D. Retailers and wholesale purchaser-consumers within a control area must maintain the following records:

(1) the names, addresses and CAR or Blender CAR, carrier, distributor, or reseller identification numbers of the parties from whom all shipments of gasoline were purchased or received, and the dates when they were received and for each shipment of gasoline bought, sold or transported:

(a) the transfer document as specified in Subsection R307-8-8.3 and

(b) a copy of each contract for delivery of oxygenated gasoline and

(2) data on every shipment of gasoline bought, sold or transported, including:

(a) volume of each shipment;

(b) type of oxygenate, percent oxygenate by volume and purity (if available);

(c) oxygen content by weight percent; and

(d) destination, as defined in R307-8-1, of each sale or shipment of gasoline; and

(3) the name and telephone number of the person responsible for maintaining the records and the address where the records are located, if the location of the records is different from the station or outlet location.

2. Reports.

A. Each CAR and Blender CAR that elects to comply with the average oxygen content standard specified in Section R307-8-3 by the compliance option specified in Subsection R307-8-5.2 shall submit a report to the executive secretary for each control period for each control area as defined in Section R307-8-1 reflecting the compliance information detailed in Subsection R307-8-5.2.

B. Each CAR and Blender CAR that elects to comply with the average oxygen content standard specified in Section R307-8-3 shall submit a report to the executive secretary for each control period for each control area as defined in Section R307-8-1 reflecting the compliance information detailed in Subsection R307-8-5.3, including the volume of gasoline sold or dispensed into each control area during the control period.

C. The report is due 30 working days, as defined in R307-8-1, after the last day of the control period for which the information is required. The report shall be filed using forms provided by the executive secretary.

3. Transfer documents. Each time that physical custody or title of gasoline destined for a control area changes hands other than when gasoline is sold or dispensed for use in motor vehicles at a retail outlet or wholesale purchaser-consumer installation, the transferor shall provide to the transferee, in addition to, or as part of, normal bills of lading, invoices, etc., a document containing information regarding that shipment. This document shall accompany every shipment of gasoline to a control area after it has been dispensed by a terminal, or the information shall be included in the normal paperwork which accompanies every shipment of gasoline. The information shall legibly and conspicuously contain the following information:

A. the date of the transfer;

B. the name, address, and CAR, Blender CAR, carrier, distributor, or reseller identification number, if applicable, of the transferor;

C. the name, address, and CAR, Blender CAR, carrier, distributor, or reseller identification number, if applicable, of the transferee;

D. the volume of gasoline which is being transferred;

E. identification of the gasoline as non-oxygenated or oxygenated;

F. the location of the gasoline at the time of the transfer;

G. type of oxygenate and percentage oxygenate by volume;

H. oxygen content by weight percent; and

I. for gasoline which is in the gasoline distribution network between the refinery or import installation and the covered area terminal, the type of oxygenate, purity, and percentage by volume and the oxygen content by weight percent.

R307-8-9. Prohibited Activities.

1. During the control period, no refiner, oxygenate blender, carrier, distributor or reseller may manufacturer, sell, offer for sale, dispense, supply, offer for supply, store, transport, or cause the transport of:

A. gasoline which contains less than 2.0%, or 2.6% if triggered as specified in R307-8-3.1.C, oxygen by weight, for use during the control period, in a control area; or

B. gasoline represented as oxygenated which has an oxygen content which is improperly stated in the documents which accompany such gasoline.

2. No retailer or wholesale purchaser-consumer may dispense, offer for sale, sell or store, for use during the control period, gasoline which contains less than 2.0%, or 2.6% if triggered as specified in R307-8-3.1.C, oxygen by weight in a control area.

3. No person may operate as a CAR or Blender CAR or hold themselves out as such unless they have been properly registered by the executive secretary. No CAR or Blender CAR may offer for sale or store, sell, or dispense gasoline, to any person not registered as a CAR, or Blender CAR for use in a control area, unless:

A. the average oxygen content of the gasoline during the averaging period meets the standard established in Section R307-8-3; and

B. the gasoline contains at least 2.0%, or 2.6% if triggered as specified in R307-8-3.1.C, oxygen by weight on a per-gallon basis.

4. For terminals which sell or dispense gasoline intended for use in a control area during a control period, the terminal owner or operator may not accept gasoline into the terminal unless:

A. transfer documentation containing the information specified in Subsection R307-8-8.3 accompanies the gasoline and

B. the terminal owner or operator conducts a quality assurance program to verify the accuracy of this information.

5. No person may sell or dispense non-oxygenated gasoline for use in any control area during the control period, unless:

A. the non-oxygenated gasoline is segregated from oxygenated gasoline;

B. clearly marked documents accompany the non-oxygenated gasoline marking it as "non-oxygenated gasoline, not for sale to ultimate consumer in a control area during a control period", and

C. the non-oxygenated gasoline is in fact not sold or dispensed to ultimate consumers, during the control period, in the control area.

6. No named person may fail to comply with the recordkeeping and reporting requirements contained in Section R307-8-8.

7. No person may sell, dispense or transfer oxygenated gasoline, except for use by the ultimate consumer at a retail outlet or wholesale purchaser-consumer installation, without transfer documents which accurately contain the information required by Subsection R307-8-8.3.

8. Liability for violations of the prohibited activities.

A. Where the gasoline contained in any storage tank at any installation owned, leased, operated, controlled or supervised by any retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, or oxygenate blender is found in violation of the prohibitions described in Subsection R307-8-9.1.A or Subsection R307-8-9.2, the following persons shall be in violation:

(1) the retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, or oxygenate blender who owns, leases, operates, controls or supervises the installation where the violation is found; and

(2) each oxygenate blender, distributor, reseller, and carrier who, downstream of the control area terminal, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of any gasoline which is in the storage tank containing gasoline found to be in violation.

B. Where the gasoline contained in any storage tank at any installation owned, leased, operated, controlled or supervised by any retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, or oxygenate blender is found in violation of the prohibitions described in Subsection R307-8-9.1.B or Subsection R307-8-9.2, the following persons shall be in violation:

(1) the retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, or oxygenate blender who owns, leases, operates, controls or supervises the installation where the violation is found; and

(2) each refiner, oxygenate blender, distributor, reseller, and carrier who manufactured, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of any gasoline which is in the storage tank containing gasoline found to be in violation.

9. Defenses for prohibited activities.

A. In any case in which a refiner, oxygenate blender, distributor, reseller or carrier would be in violation under Subsection R307-8-9.1, that person shall not be in violation if they can demonstrate that they meet all of the following:

(1) that the violation was not caused by the regulated party or its employee or agent;

(2) that refiner, oxygenate blender, distributor, reseller or carrier possesses documents which should accompany the gasoline, which contain the information required by Section R307-8-8; and

(3) that refiner, oxygenate blender, distributor, reseller or carrier conducts a quality assurance sampling and testing program as described in Subsection R307-8-9.10.

B. In any case in which a retailer or wholesale purchaser-consumer would be in violation under Subsection R307-8-9.2, the retailer or wholesale purchaser-consumer shall not be in violation if it can demonstrate that they meet all of the following:

(1) that the violation was not caused by the regulated party or its employee or agent; and

(2) that the retailer or wholesale purchaser-consumer possess documents which should accompany the gasoline, which contain the information required by Section R307-8-8.

C. Where a violation is found at an installation which is operating under the corporate, trade or brand name of a refiner, that refiner must show, in addition to the defense elements required by Subsection R307-8-9.9.A, that the violation was caused by any of the following:

(1) an act in violation of law (other than the Clean Air Act or R307-8), or an act of sabotage or vandalism, or

(2) the action of a reseller, distributor, oxygenate blender, carrier, or a retailer, or wholesale purchaser-consumer which is supplied by any of the persons listed in Subsection R307-8-9.9.A, in violation of a contractual undertaking imposed by the refiner designed to prevent such action, and despite periodic sampling and testing by the refiner to ensure compliance with such contractual obligation; or

(3) the action of any carrier or other distributor not subject to a contract with the refiner but engaged by the refiner for transportation of gasoline, despite specification or inspection of procedures and equipment by the refiner or periodic sampling and testing which are reasonably calculated to prevent such action.

D. In Section R307-8-9, the term "was caused" means that the party must demonstrate by specific showings or by direct evidence, that the violation was caused or must have been caused by another.

10. Quality Assurance Program. In order to demonstrate an acceptable quality assurance program, a party must conduct periodic sampling and testing to determine if the oxygenated gasoline has oxygen content which is consistent with the product transfer documentation.

R307-8-11. Labeling of Pumps.

1. Any person selling or dispensing oxygenated gasoline pursuant to R307-8 is required to label the fuel dispensing system with one of the following notices.

A. "The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles. This fuel contains up to (specify maximum percent by volume) (specific oxygenate or specific combination of oxygenates in concentrations of at least one percent)."

B. "The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles. This fuel contains up to (specify maximum percent by volume) (specific oxygenate or combination of oxygenates present in

concentrations of at least one percent) from November 1 through February 29."

2. The label letters shall be in block letters of no less than 20-point type, at least 1/16 inch stroke (width of type), and of a color that contrasts with the label background color. The label letters that specify maximum percent oxygenate by volume and that disclose the specific oxygenate shall be at least 1/2 inch in height, 1/16 inch stroke (width of type).

3. The label must be affixed to the upper one-half of the vertical surface of the pump on each side with gallonage and dollar amount meters from which gasoline can be dispensed and must be clearly readable to the public.

4. The retailer or wholesale purchaser-consumer shall be responsible for compliance with Section R307-8-11.

R307-8-12. Inspections.

Inspections of registered parties, control area retailers, and control area wholesale purchaser-consumers may include the following:

1. physical sampling, testing, and calculation of oxygen content of the gasoline as specified in Section R307-8-4;

2. review of documentation relating to the oxygenated gasoline program, including but not limited to records specified in Section R307-8-8; and

3. in the case of control area retailers and wholesale purchaser-consumers, verification that gasoline dispensing pumps are labeled in accordance with Section R307-8-11.

R307-8-13. Public and Industry Education Program.

The executive secretary shall provide to the affected public, mechanics, and industry information regarding the benefits of the program and other issues related to oxygenated gasoline.

KEY: air pollution control, motor vehicles, gasoline, petroleum

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Notice of Continuation June 9, 1997 19-2-104

R313. Environmental Quality, Radiation Control.
R313-18. Notices, Instructions and Reports to Workers by Licensees or Registrants--Inspections.
R313-18-1. Purpose and Authority.

(1) The purpose of this rule is to establish requirements for notices, instructions and reports by licensees or registrants to individuals engaged in work under a license or registration and options available to such individuals in connection with inspections of licensees or registrants.

(2) The rules set forth herein are adopted pursuant to the provisions of Sections 19-3-104(3) and 19-3-104(6).

R313-18-2. General.

The rules of R313-18 shall apply to all persons who receive, possess, use, own or transfer a source of radiation licensed by or registered with the Department pursuant to the rules in R313-16, R313-19 or R313-22.

R313-18-11. Posting of Notices to Workers.

(1) Licensees or registrants shall post current copies of the following documents:

(a) the rules in R313-15 and R313-18;

(b) the license, certificate of registration, conditions or documents incorporated into the license by reference and amendments thereto;

(c) the operating procedures applicable to work under the license or registration; and

(d) a notice of violation involving radiological working conditions, proposed imposition of civil penalty, order issued pursuant to R313-14, or any response from the licensee or registrant.

(2) If posting of a document specified in R313-18-11(1)(a), (b), or (c) is not practicable, the licensee or registrant may post a notice which describes the document and states where it may be examined.

(3) DRC-04 "Notice to Employees," shall be posted by licensees or registrants wherever individuals work in or frequent a portion of a restricted area.

(4) Documents from the Executive Secretary which are posted pursuant to R313-18-11(1)(d) shall be posted within five working days after receipt of the documents from the Executive Secretary; the licensee's or registrant's response, if there is one, shall be posted for a minimum of five working days after dispatch from the licensee or registrant. The documents shall remain posted for a minimum of five working days or until action correcting the violation has been competed, whichever is later.

(5) Documents, notices or forms posted pursuant to R313-18-11 shall appear in a sufficient number of places to permit individuals engaged in work under the license or registration to observe them on the way to or from any particular work location to which the document applies, shall be conspicuous, and shall be replaced if defaced or altered.

R313-18-12. Instructions to Workers.

(1) All individuals who in the course of employment are likely to receive in a year an occupational dose in excess of 1.0 mSv (100 mrem):

(a) shall be kept informed of the storage, transfer, or use of sources of radiation in the licensee's or registrant's workplace;

(b) shall be instructed in the health protection considerations associated with exposure to radiation or radioactive material to the individual and potential offspring, in precautions or procedures to minimize exposure, and in the purposes and functions of protective devices employed;

(c) shall be instructed in, and instructed to observe, to the extent within the worker's control, the applicable provisions of these rules and licenses for the protection of personnel from exposure to radiation or radioactive material;

(d) shall be instructed as to their responsibility to report promptly to the licensee or registrant a condition which may constitute, lead to, or cause a violation of the Act, these rules, and licenses or unnecessary exposure to radiation or radioactive material;

(e) shall be instructed in the appropriate response to warnings made in the event of an unusual occurrence or malfunction that may involve exposure to radiation or radioactive material; and

(f) shall be advised as to the radiation exposure reports which workers shall be furnished pursuant to R313-18-13.

(2) In determining those individuals subject to the requirements of R313-18-12(1), licensees must take into consideration assigned activities during normal and abnormal situations involving exposure to radiation or radioactive material which can reasonably be expected to occur during the life of a licensed facility. The extent of these instructions shall be commensurate with potential radiological health protection considerations for the workplace.

R313-18-13. Notifications and Reports to Individuals.

(1) Radiation exposure data for an individual and the results of measurements, analyses, and calculations of radioactive material deposited or retained in the body of an individual shall be reported to the individual as specified in R313-18-13. The information reported shall include data and results obtained pursuant to these rules, orders, or license conditions, as shown in records maintained by the licensee or registrant pursuant to R313-15-1107. Notifications and reports shall:

(a) be in writing;

(b) include appropriate identifying data such as the name of the licensee or registrant, the name of the individual, and the individual's identification number, preferably social security number;

(c) include the individual's exposure information; and

(d) contain the following statement:

"This report is furnished to you under the provisions of the Utah Administrative Code Section R313-18-13. You should preserve this report for further reference."

(2) Licensees or registrants shall furnish to each worker annually a written report of the worker's dose as shown in records maintained by the licensee or registrant pursuant to R313-15-1107.

(3) Licensees or registrants shall furnish a written report of the worker's exposure to sources of radiation at the request of a worker formerly engaged in activities controlled by the licensee or registrant. The report shall include the dose record for each year the worker was required to be monitored pursuant

to R313-15-502. The report shall be furnished within 30 days from the date of the request, or within 30 days after the dose of the individual has been determined by the licensee or registrant, whichever is later. The report shall cover the period of time that the worker's activities involved exposure to sources of radiation and shall include the dates and locations of work under the license or registration in which the worker participated during this period.

(4) When a licensee or registrant is required pursuant to R313-15-1202, R313-15-1203, or R313-15-1204 to report to the Executive Secretary an exposure of an individual to sources of radiation, the licensee or the registrant shall also provide the individual a written report on the exposure data included therein. Reports shall be transmitted at a time not later than the transmittal to the Executive Secretary.

(5) At the request of a worker who is terminating employment with the licensee or registrant in work involving exposure to radiation or radioactive material, during the current year, the licensee or registrant shall provide at termination to the worker, or to the worker's designee, a written report regarding the radiation dose received by that worker from operations of the licensee or registrant during the current year or fraction thereof. If the most recent individual monitoring results are not available at that time, a written estimate of the dose shall be provided together with a clear indication that this is an estimate.

R313-18-14. Presence of Representatives of Licensees or Registrants and Workers During Inspection.

(1) Licensees or registrants shall afford representatives of the Board or the Executive Secretary, at reasonable times, the opportunity to inspect materials, machines, activities, facilities, premises, and records pursuant to these rules.

(2) During an inspection, representatives of the Board or the Executive Secretary may consult privately with workers as specified in R313-18-15. The licensee or registrant may accompany representatives during other phases of an inspection.

(3) If, at the time of inspection, an individual has been authorized by the workers to represent them during Department inspections, the licensee or registrant shall notify the representatives of the Board or the Executive Secretary of the authorization and shall give the workers' representative an opportunity to accompany the representatives during the inspection of physical working conditions.

(4) The workers' representative shall be routinely engaged in work under control of the licensee or registrant and shall have received instructions as specified in R313-18-12.

(5) Different representatives of licensees or registrants and workers may accompany the representatives of the Board or the Executive Secretary during different phases of an inspection if there is no resulting interference with the conduct of the inspection. However, only one workers' representative at a time may accompany the representatives of the Board or the Executive Secretary.

(6) With the approval of the licensee or registrant and the workers' representative, an individual who is not routinely engaged in work under control of the licensee or registrant, for example, a consultant to the licensee or registrant or to the workers' representative, shall be afforded the opportunity to accompany representatives of the Board or the Executive Secretary during the inspection of physical working conditions.

(7) Notwithstanding the other provisions of R313-18-14, representatives of the Board or the Executive Secretary are authorized to refuse to permit accompaniment by an individual who deliberately interferes with a fair and orderly inspection. With regard to areas containing information classified by an Agency of the U.S. Government in the interest of national security, an individual who accompanies an inspector may have access to such information only if authorized to do so. With regard to areas containing proprietary information, the workers' representative for that area shall be an individual previously authorized by the licensee or registrant to enter that area.

R313-18-15. Consultation with Workers During Inspections.

(1) Representatives of the Board or the Executive Secretary may consult privately with workers concerning matters of occupational radiation protection and other matters related to applicable provisions of these rules and licenses to the extent the representatives deem necessary for the conduct of an effective and thorough inspection.

(2) During the course of an inspection, workers may bring privately to the attention of the representatives of the Board or the Executive Secretary, either orally or in writing, a past or present condition which the worker has reason to believe may have contributed to or caused a violation of the Act, these rules, or license condition, or an unnecessary exposure of an individual to sources of radiation under the licensee's or registrant's control. A notice in writing shall comply with the requirements of R313-18-16(1).

(3) The provisions of R313-18-15(2) shall not be interpreted as authorization to disregard instructions pursuant to R313-18-12.

R313-18-16. Request by Workers for Inspections.

(1) A worker or representative of workers believing that a violation of the Act, these rules, or license conditions exists or has occurred in work under a license or registration with regard to radiological working conditions in which the worker is engaged, may request an inspection by giving notice of the alleged violation to the Executive Secretary. The notice shall be in writing, shall set forth the specific grounds for the notice, and shall be signed by the worker or representative of the workers. A copy shall be provided to the licensee or registrant by representatives of the Board or the Executive Secretary no later than at the time of inspection except that, upon the request of the worker giving the notice, his name and the name of individuals referred to therein shall not appear in a copy or on a record published, released, or made available by the Department except for good cause shown.

(2) If, upon receipt of the notice, representatives of the Board or the Executive Secretary, determine that the complaint meets the requirements set forth in R313-18-16(1), and that there are reasonable grounds to believe that the alleged violation exists or has occurred, an inspection shall be made as soon as practicable to determine if the alleged violation exists or has occurred. Inspections pursuant to R313-18-16 need not be limited to matters referred to in the complaint.

(3) A licensee, registrant or contractor or subcontractor of a licensee or registrant shall not discharge or discriminate

against a worker because that worker has filed a complaint or instituted or caused to be instituted a proceeding under these rules or has testified or is about to testify in a proceeding or because of the exercise by the worker on behalf of the worker or others of an option afforded by R313-18.

R313-18-17. Inspections Not Warranted -- Informal Review.

(1)(a) If the representatives of the Board or the Executive Secretary determine, with respect to a complaint under Section R313-18-16, that an inspection is not warranted because there are no reasonable grounds to believe that a violation exists or has occurred, the Executive Secretary shall notify the complainant in writing of that determination. The complainant may obtain review of the determination by submitting a written statement of position with the Executive Secretary. The Executive Secretary will provide the licensee or registrant with a copy of the statement by certified mail, excluding, at the request of the complainant, the name of the complainant. The licensee or registrant may submit an opposing written statement of position with the Executive Secretary. The Executive Secretary will provide the complainant with a copy of the statement by certified mail.

(b) Upon the request of the complainant, the Board may hold an informal conference in which the complainant and the licensee or registrant may orally present their views. An informal conference may also be held at the request of the licensee or registrant, but disclosure of the identity of the complainant will be made only following receipt of written authorization from the complainant. After considering written and oral views presented, the Board shall affirm, modify, or reverse the determination of the representatives of the Board or the Executive Secretary and furnish the complainant and the licensee or registrant a written notification of the decision and the reason therefor.

(2) If the Executive Secretary determines that an inspection is not warranted because the requirements of R313-18-16(1) have not been met, the complainant shall be notified in writing of the determination. The determination shall be without prejudice to the filing of a new complaint meeting the requirements of R313-18-16(1).

KEY: radioactive material, inspection, radiation safety, licensing
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R313. Environmental Quality, Radiation Control.
R313-25. License Requirements for Land Disposal of Radioactive Waste - General Provisions.
R313-25-1. Purpose and Scope.

The rules in this chapter establish procedures, criteria, and terms and conditions upon which the Department issues licenses for the land disposal of wastes received from other persons. The requirements of R313-25 are in addition to, and not in substitution for, other applicable requirements of these rules.

R313-25-2. Definitions.

As used in R313-25, the following definitions apply:

"Active maintenance" means significant activity needed during the period of institutional control to maintain a reasonable assurance that the performance objectives in R313-25-19 and R313-25-20 are met. Active maintenance may include the pumping and treatment of water from a disposal unit, the replacement of a disposal unit cover, or other episodic or continuous measures. Active maintenance does not include custodial activities like repair of fencing, repair or replacement of monitoring equipment, revegetation, minor additions to soil cover, minor repair of disposal unit covers, and general disposal site upkeep.

"Buffer zone" means a portion of the disposal site that is controlled by the licensee and that lies under the disposal units and between the disposal units and the boundary of the site.

"Commencement of construction" means clearing of land, excavation, or other substantial action that could adversely affect the environment of a land disposal facility. The term does not mean disposal site exploration, necessary roads for disposal site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the disposal site or the protection of environmental values.

"Custodial agency" means an agency of the government designated to act on behalf of the government owner of the disposal site.

"Disposal" means the isolation of wastes from the biosphere by placing them in a land disposal facility.

"Disposal site" means that portion of a land disposal facility which is used for disposal of waste. It consists of disposal units and a buffer zone.

"Disposal unit" means a discrete portion of the disposal site into which waste is placed for disposal. For near-surface disposal, the disposal unit may be a trench.

"Engineered barrier" means a man-made structure or device intended to improve the land disposal facility's performance under R313-25.

"Hydrogeologic unit" means a soil or rock unit or zone that has a distinct influence on the storage or movement of ground water.

"Inadvertent intruder" means a person who may enter the disposal site after closure and engage in activities unrelated to post closure management, such as agriculture, dwelling construction, or other pursuits which could, by disturbing the site, expose individuals to radiation.

"Intruder barrier" means a sufficient depth of cover over the waste that inhibits contact with waste and helps to ensure that radiation exposures to an inadvertent intruder will meet the performance objectives set forth in R313-25, or engineered structures that provide equivalent protection to the inadvertent intruder.

"Land disposal facility" means the land, buildings and structures, and equipment which are intended to be used for the disposal of radioactive waste.

"Monitoring" means observing and making measurements to provide data to evaluate the performance and characteristics of the disposal site.

"Near-surface disposal facility" means a land disposal facility in which waste is disposed of within approximately the

upper 30 meters of the earth's surface.

"Site closure and stabilization" means those actions that are taken upon completion of operations that prepare the disposal site for custodial care, and that assure that the disposal site will remain stable and will not need ongoing active maintenance.

"Stability" means structural stability.

"Surveillance" means monitoring and observation of the disposal site to detect needs for maintenance or custodial care, to observe evidence of intrusion, and to ascertain compliance with other license and regulatory requirements.

"Waste" means those low-level radioactive wastes as defined in R313-19-3-102(7) that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level waste has the same meaning as it does in the Low-Level Radioactive Waste Policy Act, Pub.L. 96-573, 94 Stat. 3347; thus, the term denotes radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, waste does not mean byproduct material as defined in 42 U.S.C. 2011(e)(2) of the Atomic Energy Act, uranium or thorium tailings and waste.

"Treatment" means the stabilization or the reduction in volume of waste by a chemical or a physical process.

R313-25-3. Siting Criteria and Pre-licensing Plan Approval for Commercial Radioactive Waste Disposal Facilities.

(1) Persons proposing to construct or operate commercial radioactive waste disposal facilities, including waste incinerators, shall obtain a plan approval from the Executive Secretary before applying for a license. Plans meet the siting criteria and plan approval requirements of R313-25-3 and R313-19-3-105.

(2) The siting criteria and plan approval requirements in R313-25-3 apply to prelicensing plan approval applications.

(3) Treatment and disposal facilities, including commercial radioactive waste incinerators, shall not be located:

(a) within or underlain by:

(i) national, state, and county parks, monuments, and recreation areas; designated wilderness and wilderness study areas; wild and scenic river areas;

(ii) ecologically and scientifically significant natural areas, including wildlife management areas and habitats for listed or proposed endangered species as designated by federal law;

(iii) 100 year floodplains;

(iv) areas 200 feet from Holocene faults;

(v) underground mines, salt domes and salt beds;

(vi) dam failure flood areas;

(vii) areas subject to landslide, mud flow, or other earth movement, unless adverse impacts can be mitigated;

(viii) farmlands classified or evaluated as "prime", "unique", or of "statewide importance" by the U.S. Department of Agricultural Soil Conservation Service under the Prime Farmland Protection Act;

(ix) areas five miles of existing permanent dwellings, residential areas, and other habitable structures, including schools, churches, and historic structures;

(x) areas five miles of surface waters including intermittent streams, perennial streams, rivers, lakes, reservoirs, and wetlands;

(xi) areas 100 feet of uranium mill tailings;

(xii) areas 1000 feet of archeological sites to which adverse impacts cannot reasonably be mitigated;

(xiii) recharge zones of aquifers containing ground water which has a total dissolved solids content of less than 10,000 mg/l; or

(xiv) drinking water source protection areas designated by the State Drinking Water Committee;

(b) in areas:

(i) above or underlain by aquifers containing ground water which has a total dissolved solids content of less than 500 mg/l and which aquifers do not exceed state ground water standards for pollutants;

(ii) above or underlain by aquifers containing ground water which has a total dissolved solids content between 3000 and 10,000 mg/l when the distance from the surface to the ground water is less than 100 ft.;

(iii) areas, such as areas of extensive withdrawal of water, gas, or oil;

(iv) above or underlain by weak and unstable soils, including soils that lose their ability to support foundations as a result of hydrocompaction, expansion, or shrinkage;

(v) above or underlain by karst terrains.

(4) Incinerators associated with land disposal facilities may not be located above aquifers containing ground water which has a total dissolved solids content below 3000 mg/l. Incinerators not associated with ground disposal facilities shall not be located above aquifers containing ground water which has a total dissolved solids content below 500 mg/l.

(5) Facilities may not be located within a distance to existing drinking water wells and watersheds for public water supplies of one year ground water travel time plus 1000 feet for incinerators and of five years ground water travel time plus 1000 feet for land disposal facilities.

(6) The plan approval application shall include hydraulic conductivity and other information necessary to estimate adequately the ground water travel distance.

(7) The plan approval application shall include the results of studies adequate to identify the presence of ground water aquifers in the area of the proposed site and to assess the quality of the ground water of all aquifers identified in the area of the proposed site.

(8) The Executive Secretary may require the applicant to conduct vadose zone or other near surface monitoring.

(9) Emergency response and safety.

(a) The plan approval application shall demonstrate the availability and adequacy of emergency services, including medical and fire response. The application shall provide evidence that the applicant has coordinated emergency response plans with local and regional emergency response resources.

(b) The plan approval application shall include plans for responding to emergencies both at the site and those involving the transport of wastes within the state. Details of the proposed emergency response plan shall be given in the plan approval application and will be stipulated in the plan approval and radioactive materials license.

(c) The plan approval application shall show proposed routes for transportation of radioactive wastes within the state. The Executive Secretary will not approve plans that propose radioactive waste transportation routes over roads or bridges

where weight restrictions would be exceeded. The Executive Secretary will not approve plans that pose adverse impact or risk of harm to inhabited areas. The plan approval application shall address risks to inhabited areas, including both residential and non-residential areas; the width, condition, and types of roads to be used; roadside development on proposed routes; seasonal and climatic factors which may affect safety; alternate emergency access to the facility; the type, size, and configuration of vehicles proposed to haul wastes; transportation restrictions on proposed routes; and the transportation means and routes available to evacuate the population at risk in the event of accidents, including spills and fires.

(10) Siting Authority. The Executive Secretary recognizes that Titles 10 and 17 of the Utah Code give cities and counties authority for local use planning and zoning. Nothing in R313-25-3 precludes cities and counties from establishing additional requirements as provided by applicable state and federal law.

R313-25-4. License Required.

(1) Persons shall not receive, possess, or dispose of waste at a land disposal facility unless authorized by a license issued by the Executive Secretary pursuant to R313-25 and R313-22.

(2) Persons shall file an application with the Executive Secretary pursuant to R313-22-32 and obtain a license as provided in R313-25 before commencement of construction of a land disposal facility. Failure to comply with this requirement may be grounds for denial of a license and other penalties established by law and rules.

R313-25-5. Content of Application.

In addition to the requirements set forth in R313-22-33, an application to receive from others, possess, and dispose of wastes shall consist of general information, specific technical information, institutional information, and financial information as set forth in R313-25-6 through R313-25-10.

R313-25-6. General Information.

The general information shall include the following:

(1) identity of the applicant including:

(a) the full name, address, telephone number, and description of the business or occupation of the applicant;

(b) if the applicant is a partnership, the names and addresses of the partners and the principal location where the partnership does business;

(c) if the applicant is a corporation or an unincorporated association;

(i) the state where it is incorporated or organized and the principal location where it does business; and

(ii) the names and addresses of its directors and principal officers; and

(d) if the applicant is acting as an agent or representative of another person in filing the application, the applicant shall provide, with respect to the other person, information required under R313-25-6(1).

(2) Qualifications of the applicant shall include the following;

(a) the organizational structure of the applicant, both offsite and onsite, including a description of lines of authority and assignments of responsibilities, whether in the form of administrative directives, contract provisions, or otherwise;

(b) the technical qualifications, including training and experience of the applicant and members of the applicant's staff, to engage in the proposed activities. Minimum training and experience requirements for personnel filling key positions described in R313-25-6(2)(a) shall be provided;

(c) a description of the applicant's personnel training program; and

(d) the plan to maintain an adequate complement of trained personnel to carry out waste receipt, handling, and disposal operations in a safe manner.

(3) A description of:

(a) the location of the proposed disposal site;

(b) the general character of the proposed activities;

(c) the types and quantities of waste to be received, possessed, and disposed of;

(d) plans for use of the land disposal facility for purposes other than disposal of wastes; and

(e) the proposed facilities and equipment; and

(4) proposed schedules for construction, receipt of waste, and first emplacement of waste at the proposed land disposal facility.

R313-25-7. Specific Technical Information.

The application shall include certain technical information. The following information is needed to determine whether or not the applicant can meet the performance objectives and the applicable technical requirements of R313-25:

(1) A description of the natural and demographic disposal site characteristics shall be based on and determined by disposal site selection and characterization activities. The description shall include geologic, geochemical, geotechnical, hydrologic, ecologic, archaeologic, meteorologic, climatologic, and biotic features of the disposal site and vicinity.

(2) Descriptions of the design features of the land disposal facility and of the disposal units for near-surface disposal shall include those design features related to infiltration of water; integrity of covers for disposal units; structural stability of backfill, wastes, and covers; contact of wastes with standing water; disposal site drainage; disposal site closure and stabilization; elimination to the extent practicable of long-term disposal site maintenance; inadvertent intrusion; occupational exposures; disposal site monitoring; and adequacy of the size of the buffer zone for monitoring and potential mitigative measures.

(3) Descriptions of the principal design criteria and their relationship to the performance objectives.

(4) Descriptions of the natural events or phenomena on which the design is based and their relationship to the principal design criteria.

(5) Descriptions of codes and standards which the applicant has applied to the design, and will apply to construction of the land disposal facilities.

(6) Descriptions of the construction and operation of the land disposal facility. The description shall include as a minimum the methods of construction of disposal units; waste emplacement; the procedures for and areas of waste segregation; types of intruder barriers; onsite traffic and drainage systems; survey control program; methods and areas of waste storage;

and methods to control surface water and ground water access to the wastes. The description shall also include a description of the methods to be employed in the handling and disposal of wastes containing chelating agents or other non-radiological substances which might affect meeting the performance objectives of R313-25

(7) A description of the disposal site closure plan, including those design features which are intended to facilitate disposal site closures and to eliminate the need for active maintenance after closure.

(8) Identification of the known natural resources at the disposal site whose exploitation could result in inadvertent intrusion into the wastes after removal of active institutional control.

(9) Descriptions of the kind, amount, classification and specifications of the radioactive material proposed to be received, possessed, and disposed of at the land disposal facility.

(10) Descriptions of quality assurance programs, tailored to low-level waste disposal, including audit and managerial controls, for the determination of natural disposal site characteristics and for quality control during the design, construction, operation, and closure of the land disposal facility and the receipt, handling, and emplacement of waste.

(11) A description of the radiation safety program for control and monitoring of radioactive effluents to ensure compliance with the performance objective in R313-25-19 and monitoring of occupational radiation exposure to ensure compliance with the requirements of R313-15 and to control contamination of personnel, vehicles, equipment, buildings, and the disposal site. The applicant shall describe procedures, instrumentation, facilities, and equipment appropriate to both routine and emergency operations.

(12) A description of the environmental monitoring program to provide data and to evaluate potential health and environmental impacts and the plan for taking corrective measures if migration is indicated.

(13) Descriptions of the administrative procedures that the applicant will apply to control activities at the land disposal facility.

(14) A description of the facility electronic recordkeeping system as required in R313-25-33.

R313-25-8. Technical Analyses.

The specific technical information shall also include the following analyses needed to demonstrate that the performance objectives of R313-25 will be met:

(1) Analyses demonstrating that the general population will be protected from releases of radioactivity shall consider the pathways of air, soil, ground water, surface water, plant uptake, and exhumation by burrowing animals. The analyses shall clearly identify and differentiate between the roles performed by the natural disposal site characteristics and design features in isolating and segregating the wastes. The analyses shall clearly demonstrate a reasonable assurance that the exposures to humans from the release of radioactivity will not exceed the limits set forth in R313-25-19.

(2) Analyses of the protection of inadvertent intruders shall demonstrate a reasonable assurance that the waste classification and segregation requirements will be met and that adequate barriers to inadvertent intrusion will be provided.

(3) Analysis of the protection of individuals during operations shall include assessments of expected exposures due to routine operations and likely accidents during handling, storage, and disposal of waste. The analysis shall provide reasonable assurance that exposures will be controlled to meet the requirements of R313-15.

(4) Analyses of the long-term stability of the disposal site shall be based upon analyses of active natural processes including erosion, mass wasting, slope failure, settlement of wastes and backfill, infiltration through covers over disposal areas and adjacent soils, and surface drainage of the disposal site. The analyses shall provide reasonable assurance that there will not be a need for ongoing active maintenance of the disposal site following closure.

R313-25-9. Institutional Information.

The institutional information submitted by the applicant shall include:

(1) A certification by the federal or state agency which owns the disposal site that the agency is prepared to accept transfer of the license when the provisions of R313-25-16 are met and will assume responsibility for institutional control after site closure and for post-closure observation and maintenance.

(2) Evidence, if the proposed disposal site is on land not owned by the federal or a state government, that arrangements have been made for assumption of ownership in fee by the federal or a state agency.

R313-25-10. Financial Information.

This information shall demonstrate that the applicant is financially qualified to carry out the activities for which the license is sought. The information shall meet other financial assurance requirements of R313-25 .

R313-25-11. Requirements for Issuance of a License.

A license for the receipt, possession, and disposal of waste containing radioactive material will be issued by the Executive Secretary upon finding that:

(1) the issuance of the license will not constitute an unreasonable risk to the health and safety of the public;

(2) the applicant is qualified by reason of training and experience to carry out the described disposal operations in a manner that protects health and minimizes danger to life or property;

(3) the applicant's proposed disposal site, disposal design, land disposal facility operations, including equipment, facilities, and procedures, disposal site closure, and post-closure institutional control, are adequate to protect the public health and safety as specified in the performance objectives of R313-25-19;

(4) the applicant's proposed disposal site, disposal site design, land disposal facility operations, including equipment, facilities, and procedures, disposal site closure, and post-closure institutional control are adequate to protect the public health and safety in accordance with the performance objectives of R313-25-20;

(5) the applicant's proposed land disposal facility operations, including equipment, facilities, and procedures, are

adequate to protect the public health and safety in accordance with R313-15;

(6) the applicant's proposed disposal site, disposal site design, land disposal facility operations, disposal site closure, and post-closure institutional control plans are adequate to protect the public health and safety in that they will provide reasonable assurance of the long-term stability of the disposed waste and the disposal site and will eliminate to the extent practicable the need for continued maintenance of the disposal site following closure;

(7) the applicant's demonstration provides reasonable assurance that the requirements of R313-25 will be met;

(8) the applicant's proposal for institutional control provides reasonable assurance that control will be provided for the length of time found necessary to ensure the findings in R313-25-11(3) through (6) and that the institutional control meets the requirements of R313-25-28.

(9) the financial or surety arrangements meet the requirements of R313-25.

R313-25-12. Conditions of Licenses.

(1) A license issued under R313-25, or a right thereunder, may not be transferred, assigned, or disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to a person, unless the Executive Secretary finds, after securing full information, that the transfer is in accordance with the provisions of the Radiation Control Act and Rules and gives his consent in writing in the form of a license amendment.

(2) The Executive Secretary may require the licensee to submit written statements under oath.

(3) The license will be terminated only on the full implementation of the final closure plan, including post-closure observation and maintenance, as approved by the Executive Secretary.

(4) The licensee shall submit to the provisions of the Act now or hereafter in effect, and to all findings and orders of the Executive Secretary. The terms and conditions of the license are subject to amendment, revision, or modification, by reason of amendments to, or by reason of rules, and orders issued in accordance with the terms of the Act and these rules.

(5) Persons licensed by the Executive Secretary pursuant to R313-25 shall confine possession and use of the materials to the locations and purposes authorized in the license.

(6) The licensee shall not dispose of waste until the Executive Secretary has inspected the land disposal facility and has found it to conform with the description, design, and construction described in the application for a license.

(7) The Executive Secretary may incorporate, by rule or order, into licenses at the time of issuance or thereafter, additional requirements and conditions with respect to the licensee's receipt, possession, and disposal of waste as the Executive Secretary deems appropriate or necessary in order to:

(a) protect health or to minimize danger to life or property;

(b) require reports and the keeping of records, and to provide for inspections of licensed activities as the Executive Secretary deems necessary or appropriate to effectuate the purposes of the Radiation Control Act and Rules.

(8) The authority to dispose of wastes expires on the expiration date stated in the license. An expiration date on a license applies only to the above ground activities and to the authority to dispose of waste. Failure to renew the license shall not relieve the licensee of responsibility for implementing site closure, post-closure observation, and transfer of the license to the site owner.

R313-25-13. Application for Renewal or Closure.

(1) An application for renewal or an application for closure under R313-25-14 shall be filed at least 90 days prior to license expiration.

(2) Applications for renewal of a license shall be filed in accordance with R313-25-5 through 25-10. Applications for closure shall be filed in accordance with R313-25-14. Information contained in previous applications, statements, or reports filed with the Executive Secretary under the license may be incorporated by reference if the references are clear and specific.

(3) If a licensee has filed an application in proper form for renewal of a license, the license shall not expire unless and until the Executive Secretary has taken final action to deny application for renewal.

(4) In evaluating an application for license renewal, the Executive Secretary will apply the criteria set forth in R313-25-11.

R313-25-14. Contents of Application for Site Closure and Stabilization.

(1) Prior to final closure of the disposal site, or as otherwise directed by the Executive Secretary, the licensee shall submit an application to amend the license for closure. This closure application shall include a final revision and specific details of the disposal site closure plan included in the original license application submitted and approved under R313-25-7(7). The plan shall include the following:

(a) additional geologic, hydrologic, or other data pertinent to the long-term containment of emplaced wastes obtained during the operational period;

(b) the results of tests, experiments, or other analyses relating to backfill of excavated areas, closure and sealing, waste migration and interaction with emplacement media, or other tests, experiments, or analyses pertinent to the long-term containment of emplaced waste within the disposal site;

(c) proposed revision of plans for:

(i) decontamination or dismantlement of surface facilities;

(ii) backfilling of excavated areas; or

(iii) stabilization of the disposal site for post-closure care.

(d) Significant new information regarding the environmental impact of closure activities and long-term performance of the disposal site.

(2) Upon review and consideration of an application to amend the license for closure submitted in accordance with R313-25-14(1), the Executive Secretary shall issue an amendment authorizing closure if there is reasonable assurance that the long-term performance objectives of R313-25 will be met.

R313-25-15. Post-Closure Observation and Maintenance.

The licensee shall observe, monitor, and carry out

necessary maintenance and repairs at the disposal site until the site closure is complete and the license is transferred by the Executive Secretary in accordance with R313-25-16. The licensee shall remain responsible for the disposal site for an additional five years. The Executive Secretary may approve closure plans that provide for shorter or longer time periods of post-closure observation and maintenance, if sufficient rationale is developed for the variance.

R313-25-16. Transfer of License.

Following closure and the period of post-closure observation and maintenance, the licensee may apply for an amendment to transfer the license to the disposal site owner. The license shall be transferred when the Executive Secretary finds:

(1) that the disposal site was closed according to the licensee's approved disposal site closure plan;

(2) that the licensee has provided reasonable assurance that the performance objectives of R313-25 have been met;

(3) that funds for care and records required by R313-25-33(4) and (5) have been transferred to the disposal site owner;

(4) that the post-closure monitoring program is operational and can be implemented by the disposal site owner; and

(5) that the Federal or State agency which will assume responsibility for institutional control of the disposal site is prepared to assume responsibility and ensure that the institutional requirements found necessary under R313-25-11(8) will be met.

R313-25-17. Termination of License.

(1) Following the period of institutional control needed to meet the requirements of R313-25-11, the licensee may apply for an amendment to terminate the license.

(2) This application will be reviewed in accordance with the provisions of R313-22-32.

(3) A license shall be terminated only when the Executive Secretary finds:

(a) that the institutional control requirements of R313-25-11(8) have been met;

(b) that additional requirements resulting from new information developed during the institutional control period have been met;

(c) that permanent monuments or markers warning against intrusion have been installed; and

(d) that records required by R313-25-33(4) and (5) have been sent to the party responsible for institutional control of the disposal site and a copy has been sent to the Executive Secretary immediately prior to license termination.

R313-25-18. General Requirement.

Land disposal facilities shall be sited, designed, operated, closed, and controlled after closure so that reasonable assurance exists that exposures to individuals do not exceed the limits stated in R313-25-19 and 25-22.

R313-25-19. Protection of the General Population from Releases of Radioactivity.

Concentrations of radioactive material which may be released to the general environment in ground water, surface water, air, soil, plants or animals shall not result in an annual dose exceeding an equivalent of 25 millirems (0.25 mSv) to the whole body, 75 millirems (0.75 mSv) to the thyroid, and 25 millirems (0.25 mSv) to any other organ of any member of the public. Reasonable efforts should be made to maintain releases of radioactivity in effluents to the general environment as low as is reasonably achievable.

R313-25-20. Protection of Individuals from Inadvertent Intrusion.

Design, operation, and closure of the land disposal facility shall ensure protection of any individuals inadvertently intruding into the disposal site and occupying the site or contacting the waste after active institutional controls over the disposal site are removed.

R313-25-21. Protection of Individuals During Operations.

Operations at the land disposal facility shall be conducted in compliance with the standards for radiation protection set out in R313-15 of these rules, except for release of radioactivity in effluents from the land disposal facility, which shall be governed by R313-25-19. Every reasonable effort should be made to maintain radiation exposures as low as is reasonably achievable, ALARA.

R313-25-22. Stability of the Disposal Site After Closure.

The disposal facility shall be sited, designed, used, operated, and closed to achieve long-term stability of the disposal site and to eliminate, to the extent practicable, the need for ongoing active maintenance of the disposal site following closure so that only surveillance, monitoring, or minor custodial care are required.

R313-25-23. Disposal Site Suitability Requirements for Land Disposal - Near-Surface Disposal.

(1) The primary emphasis in disposal site suitability is given to isolation of wastes and to disposal site features that ensure that the long-term performance objectives are met.

(2) The disposal site shall be capable of being characterized, modeled, analyzed and monitored.

(3) Within the region where the facility is to be located, a disposal site should be selected so that projected population growth and future developments are not likely to affect the ability of the disposal facility to meet the performance objectives of R313-25.

(4) Areas shall be avoided having known natural resources which, if exploited, would result in failure to meet the performance objectives of R313-25.

(5) The disposal site shall be generally well drained and free of areas of flooding or frequent ponding. Waste disposal shall not take place in a 100-year flood plain, coastal high-hazard area or wetland, as defined in Executive Order 11988, "Floodplain Management Guidelines."

(6) Upstream drainage areas shall be minimized to decrease the amount of runoff which could erode or inundate waste disposal units.

(7) The disposal site shall provide sufficient depth to the water table that ground water intrusion, perennial or otherwise, into the waste will not occur. The Executive Secretary will

consider an exception to this requirement to allow disposal below the water table if it can be conclusively shown that disposal site characteristics will result in molecular diffusion being the predominant means of radionuclide movement and the rate of movement will result in the performance objectives being met. In no case will waste disposal be permitted in the zone of fluctuation of the water table.

(8) The hydrogeologic unit used for disposal shall not discharge ground water to the surface within the disposal site.

(9) Areas shall be avoided where tectonic processes such as faulting, folding, seismic activity, vulcanism, or similar phenomena may occur with such frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives of R313-25 or may preclude defensible modeling and prediction of long-term impacts.

(10) Areas shall be avoided where surface geologic processes such as mass wasting, erosion, slumping, landsliding, or weathering occur with sufficient such frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives of R313-25, or may preclude defensible modeling and prediction of long-term impacts.

(11) The disposal site shall not be located where nearby facilities or activities could adversely impact the ability of the site to meet the performance objectives of R313-25 or significantly mask the environmental monitoring program.

R313-25-24. Disposal Site Design for Near-Surface Land Disposal.

(1) Site design features shall be directed toward long-term isolation and avoidance of the need for continuing active maintenance after site closure.

(2) The disposal site design and operation shall be compatible with the disposal site closure and stabilization plan and lead to disposal site closure that provides reasonable assurance that the performance objectives will be met.

(3) The disposal site shall be designed to complement and improve, where appropriate, the ability of the disposal site's natural characteristics to assure that the performance objectives will be met.

(4) Covers shall be designed to minimize, to the extent practicable, water infiltration, to direct percolating or surface water away from the disposed waste, and to resist degradation by surface geologic processes and biotic activity.

(5) Surface features shall direct surface water drainage away from disposal units at velocities and gradients which will not result in erosion that will require ongoing active maintenance in the future.

(6) The disposal site shall be designed to minimize to the extent practicable the contact of water with waste during storage, the contact of standing water with waste during disposal, and the contact of percolating or standing water with wastes after disposal.

R313-25-25. Near Surface Land Disposal Facility Operation and Disposal Site Closure.

(1) Wastes designated as Class A pursuant to R313-15-307 of these rules shall be segregated from other wastes by placing them in disposal units which are sufficiently separated from disposal units for the other waste classes so that any interaction between Class A wastes and other wastes will not result in the failure to meet the performance objectives of R313-25. This segregation is not necessary for Class A wastes if they meet the stability requirements of R313-15-308(2).

(2) Wastes designated as Class C pursuant to R313-15-307 shall be disposed of so that the top of the waste is a minimum of five meters below the top surface of the cover or shall be disposed of with intruder barriers that are designed to protect against an inadvertent intrusion for at least 500 years.

(3) Except as provided in R313-25-1(1), only waste classified as Class A, B, or C shall be acceptable for near-surface disposal. Wastes shall be disposed of in accordance with the requirements of R313-25-25(4) through 11.

(4) Wastes shall be emplaced in a manner that maintains the package integrity during emplacement, minimizes the void spaces between packages, and permits the void spaces to be filled.

(5) Void spaces between waste packages shall be filled with earth or other material to reduce future subsidence within the fill.

(6) Waste shall be placed and covered in a manner that limits the radiation dose rate at the surface of the cover to levels that at a minimum will permit the licensee to comply with all provisions of R313-15-105 at the time the license is transferred pursuant to R313-25-16.

(7) The boundaries and locations of disposal units shall be accurately located and mapped by means of a land survey. Near-surface disposal units shall be marked in such a way that the boundaries of the units can be easily defined. Three permanent survey marker control points, referenced to United States Geological Survey or National Geodetic Survey control stations, shall be established on the site to facilitate surveys. The United States Geological Survey or National Geodetic Survey control stations shall provide horizontal and vertical controls as checked against United States Geological Survey or National Geodetic Survey record files.

(8) A buffer zone of land shall be maintained between any buried waste and the disposal site boundary and beneath the disposed waste. The buffer zone shall be of adequate dimensions to carry out environmental monitoring activities specified in R313-25-26(4) and take mitigative measures if needed.

(9) Closure and stabilization measures as set forth in the approved site closure plan shall be carried out as the disposal units are filled and covered.

(10) Active waste disposal operations shall not have an adverse effect on completed closure and stabilization measures.

(11) Only wastes containing or contaminated with radioactive material shall be disposed of at the disposal site.

(12) Proposals for disposal of waste that are not generally acceptable for near-surface disposal because the wastes form and disposal methods shall be different and, in general, more stringent than those specified for Class C waste, may be submitted to the Executive Secretary for approval.

R313-25-26. Environmental Monitoring.

(1) At the time a license application is submitted, the applicant shall have conducted a preoperational monitoring program to provide basic environmental data on the disposal site

characteristics. The applicant shall obtain information about the ecology, meteorology, climate, hydrology, geology, geochemistry, and seismology of the disposal site. For those characteristics that are subject to seasonal variation, data shall cover at least a 12-month period.

(2) During the land disposal facility site construction and operation, the licensee shall maintain an environmental monitoring program. Measurements and observations shall be made and recorded to provide data to evaluate the potential health and environmental impacts during both the construction and the operation of the facility and to enable the evaluation of long-term effects and need for mitigative measures. The monitoring system shall be capable of providing early warning of releases of waste from the disposal site before they leave the site boundary.

(3) After the disposal site is closed, the licensee responsible for post-operational surveillance of the disposal site shall maintain a monitoring system based on the operating history and the closure and stabilization of the disposal site. The monitoring system shall be capable of providing early warning of releases of waste from the disposal site before they leave the site boundary.

(4) The licensee shall have plans for taking corrective measures if the environmental monitoring program detects migration of waste which would indicate that the performance objectives may not be met.

R313-25-27. Alternative Requirements for Design and Operations.

The Executive Secretary may, upon request or on his own initiative, authorize provisions other than those set forth in R313-25-24 and 25-26 for the segregation and disposal of waste and for the design and operation of a land disposal facility on a specific basis, if it finds reasonable assurance of compliance with the performance objectives of R313-25.

R313-25-28. Institutional Requirements.

(1) Land Ownership. Disposal of waste received from other persons may be permitted only on land owned in fee by the Federal or a State government.

(2) Institutional Control. The land owner or custodial agency shall conduct an institutional control program to physically control access to the disposal site following transfer of control of the disposal site from the disposal site operator. The institutional control program shall also include, but not be limited to, conducting an environmental monitoring program at the disposal site, periodic surveillance, minor custodial care, and other equivalents as determined by the Executive Secretary, and administration of funds to cover the costs for these activities. The period of institutional controls will be determined by the Executive Secretary, but institutional controls may not be relied upon for more than 100 years following transfer of control of the disposal site to the owner.

R313-25-30. Applicant Qualifications and Assurances.

The applicant shall show that it either possesses the necessary funds, or has reasonable assurance of obtaining the necessary funds, or by a combination of the two, to cover the estimated costs of conducting all licensed activities over the planned operating life of the project, including costs of construction and disposal.

R313-25-31. Funding for Disposal Site Closure and Stabilization.

(1) The applicant shall provide assurances prior to the commencement of operations that sufficient funds will be available to carry out disposal site closure and stabilization, including:

(a) decontamination or dismantlement of land disposal facility structures, and

(b) closure and stabilization of the disposal site so that following transfer of the disposal site to the site owner, the need for ongoing active maintenance is eliminated to the extent practicable and only minor custodial care, surveillance, and monitoring are required. These assurances shall be based on Executive Secretary approved cost estimates reflecting the Executive Secretary approved plan for disposal site closure and stabilization. The applicant's cost estimates shall take into account total costs that would be incurred if an independent contractor were hired to perform the closure and stabilization work.

(2) In order to avoid unnecessary duplication and expense, the Executive Secretary will accept financial sureties that have been consolidated with earmarked financial or surety arrangements established to meet requirements of Federal or other State agencies or local governmental bodies for decontamination, closure, and stabilization. The Executive Secretary will accept these arrangements only if they are considered adequate to satisfy the requirements of R313-25-31 and if they clearly identify that the portion of the surety which covers the closure of the disposal site is clearly identified and committed for use in accomplishing these activities.

(3) The licensee's financial or surety arrangement shall be submitted annually for review by the Executive Secretary to assure that sufficient funds will be available for completion of the closure plan.

(4) The amount of the licensee's financial or surety arrangement shall change in accordance with changes in the predicted costs of closure and stabilization. Factors affecting closure and stabilization cost estimates include inflation, increases in the amount of disturbed land, changes in engineering plans, closure and stabilization that have already been accomplished, and other conditions affecting costs. The financial or surety arrangement shall be sufficient at all times to cover the costs of closure and stabilization of the disposal units that are expected to be used before the next license renewal.

(5) The financial or surety arrangement shall be written for a specified period of time and shall be automatically renewed unless the person who issues the surety notifies the Executive Secretary; the beneficiary, the site owner; and the principal, the licensee, not less than 90 days prior to the renewal date of its intention not to renew. In such a situation, the licensee shall submit a replacement surety within 30 days after notification of cancellation. If the licensee fails to provide a replacement surety acceptable to the Executive Secretary, the beneficiary may collect on the original surety.

(6) Proof of forfeiture shall not be necessary to collect the surety so that, in the event that the licensee could not provide an

acceptable replacement surety within the required time, the surety shall be automatically collected prior to its expiration. The conditions described above shall be clearly stated on surety instruments.

(7) Financial or surety arrangements generally acceptable to the Executive Secretary include surety bonds, cash deposits, certificates of deposit, deposits of government securities, escrow accounts, irrevocable letters or lines of credit, trust funds, and combinations of the above or other types of arrangements as may be approved by the Executive Secretary. Self-insurance, or an arrangement which essentially constitutes self-insurance, will not satisfy the surety requirement for private sector applicants.

(8) The licensee's financial or surety arrangement shall remain in effect until the closure and stabilization program has been completed and approved by the Executive Secretary, and the license has been transferred to the site owner.

R313-25-32. Financial Assurances for Institutional Controls.

(1) Prior to the issuance of the license, the applicant shall provide for Executive Secretary approval, a binding arrangement, between the applicant and the disposal site owner that ensures that sufficient funds will be available to cover the costs of monitoring and required maintenance during the institutional control period. The binding arrangement shall be reviewed annually by the Executive Secretary to ensure that changes in inflation, technology, and disposal facility operations are reflected in the arrangements.

(2) Subsequent changes to the binding arrangement specified in R313-25-32(1) relevant to institutional control shall be submitted to the Executive Secretary for prior approval.

R313-25-33. Maintenance of Records, Reports, and Transfers.

(1) Licensees shall maintain records and make reports in connection with the licensed activities as may be required by the conditions of the license or by the rules and orders of the Executive Secretary.

(2) Records which are required by these rules or by license conditions shall be maintained for a period specified by the appropriate rules or by license condition. If a retention period is not otherwise specified, these records shall be maintained and transferred to the officials specified in R313-25-33(4) as a condition of license termination unless the Executive Secretary otherwise authorizes their disposition.

(3) Records which shall be maintained pursuant to R313-25 may be the original or a reproduced copy or microfilm if this reproduced copy or microfilm is capable of producing copy that is clear and legible at the end of the required retention period.

(4) Notwithstanding R313-25-33(1) through (3), copies of records of the location and the quantity of wastes contained in the disposal site shall be transferred upon license termination to the chief executive of the nearest municipality, the chief executive of the county in which the facility is located, the county zoning board or land development and planning agency, the State Governor, and other state, local, and federal governmental agencies as designated by the Executive Secretary at the time of license termination.

(5) Following receipt and acceptance of a shipment of waste, the licensee shall record the date that the shipment is received at the disposal facility, the date of disposal of the waste, a traceable shipment manifest number, a description of any engineered barrier or structural overpack provided for disposal of the waste, the location of disposal at the disposal site, the condition of the waste packages as received, discrepancies between the materials listed on the manifest and those received, the volume of any pallets, bracing, or other shipping or onsite generated materials that are contaminated, and are disposed of as contaminated or suspect materials, and evidence of leakage or damaged packages or radiation or contamination levels in excess of limits specified in U.S. Department of Transportation and Executive Secretary regulations or rules. The licensee shall briefly describe repackaging operations of the waste packages included in the shipment, plus other information required by the Executive Secretary as a license condition.

(6) Licensees authorized to dispose of waste received from other persons shall file a copy of their financial report or a certified financial statement annually with the Executive Secretary in order to update the information base for determining financial qualifications.

(7)(a) Licensees authorized to dispose of waste received from other persons, pursuant to R313-25, shall submit annual reports to the Executive Secretary. Reports shall be submitted by the end of the first calendar quarter of each year for the preceding year.

(b) The reports shall include:

(i) specification of the quantity of each of the principal contaminants released to unrestricted areas in liquid and in airborne effluents during the preceding year;

(ii) the results of the environmental monitoring program;

(iii) a summary of licensee disposal unit survey and maintenance activities;

(iv) a summary, by waste class, of activities and quantities of radionuclides disposed of;

(v) instances in which observed site characteristics were significantly different from those described in the application for a license; and

(vi) other information the Executive Secretary may require.

(c) If the quantities of waste released during the reporting period, monitoring results, or maintenance performed are significantly different from those predicted, the report shall cover this specifically.

(8) In addition to the other requirements in R313-25-33, the licensee shall store, or have stored, manifest and other information pertaining to receipt and disposal of radioactive waste in an electronic recordkeeping system.

(a) The manifest information that must be electronically stored is:

(i) that required in Appendix G of 10 CFR 20.1001 to 20.2402, 1997 ed., which is incorporated into these rules by reference, with the exception of shipper and carrier telephone numbers and shipper and consignee certifications; and

(ii) that information required in R313-25-33(5).

(b) As specified in facility license conditions, the licensee shall report the stored information, or subsets of this information, on a computer-readable medium.

R313-25-34. Tests on Land Disposal Facilities.

Licensees shall perform, or permit the Executive Secretary to perform, any tests the Executive Secretary deems appropriate or necessary for the administration of the rules in R313-25, including, but not limited to, tests of;

(1) wastes;

(2) facilities used for the receipt, storage, treatment, handling or disposal of wastes;

(3) radiation detection and monitoring instruments; or

(4) other equipment and devices used in connection with the receipt, possession, handling, treatment, storage, or disposal of waste.

R313-25-35. Executive Secretary Inspections of Land Disposal Facilities.

(1) Licensees shall afford to the Executive Secretary, at reasonable times, opportunity to inspect waste not yet disposed of, and the premises, equipment, operations, and facilities in which wastes are received, possessed, handled, treated, stored, or disposed of.

(2) Licensees shall make available to the Executive Secretary for inspection, upon reasonable notice, records kept by it pursuant to these rules. Authorized representatives of the Executive Secretary may copy and take away copies of, for the Executive Secretary's use, any records required to be kept pursuant to R313-25.

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R313. Environmental Quality, Radiation Control.
R313-32. Medical Use of Radioactive Material.
R313-32-1. Purpose and Authority.

(1) The purpose of this rule is to prescribe requirements and provisions for the medical use of radioactive material and for issuance of specific licenses authorizing the medical use of this material. These requirements and provisions provide for the protection of the public health and safety. The requirements and provisions of R313-32 are in addition to, and not in substitution for, other sections of R313.

(2) The rules set forth herein are adopted pursuant to the provisions of Sections 19-3-104(3) and 19-3-104(6).

R313-32-2. Definitions.

"Authorized nuclear pharmacist" means a pharmacist who is:

(a) board certified as a nuclear pharmacist by the Board of Pharmaceutical Specialties;

(b) identified as an authorized nuclear pharmacist on a Nuclear Regulatory Commission or Agreement State license that authorizes the use of radioactive material in the practice of nuclear pharmacy; or

(c) identified as an authorized nuclear pharmacist on a permit issued by a Nuclear Regulatory Commission or Agreement State specific licensee of broad scope that is authorized to permit the use of radioactive material in the practice of nuclear pharmacy.

"Authorized user" means a physician, dentist, or podiatrist who is:

(a) board certified by at least one of the boards listed in Paragraph (1) of R313-32-910, R313-32-920, R313-32-930, R313-32-940, R313-32-950, or R313-32-960;

(b) identified as an authorized user on a Nuclear Regulatory Commission or Agreement State license that authorizes the medical use of radioactive material; or

(c) identified as an authorized user on a permit issued by a Nuclear Regulatory Commission or Agreement State specific licensee of broad scope that is authorized to permit the medical use of radioactive material.

"Brachytherapy source" means an individual sealed source or a manufacturer-assembled source train that is not designed to be disassembled by the user.

"Dedicated check source" means a radioactive source that is used to assure the constant operation of a radiation detection or measurement device over several months or years.

"Dental use" means the intentional external administration of the radiation from radioactive material to human beings in the practice of dentistry in accordance with a license issued by this state.

"Dentist" means an individual licensed by this state to practice dentistry.

"Diagnostic clinical procedures manual" means a collection of written procedures that describes each method, other instructions, and precautions, by which the licensee performs diagnostic clinical procedures; where each diagnostic clinical procedure has been approved by the authorized user and includes the radiopharmaceutical, dosage, and route of administration.

"Management" means the chief executive officer or that person's delegate.

"Medical institution" means an organization in which several medical disciplines are practiced.

"Medical use" means the intentional internal or external administration of radioactive material, or the radiation therefrom, to patients or human research subjects under the supervision of an authorized user.

"Ministerial change" means a change that is made, after ascertaining the applicable requirements, by persons in authority in conformance with the requirements and without making a discretionary judgement about whether those requirements should apply in the case at hand.

"Misadministration" means the administration of:

(a) A radiopharmaceutical dosage greater than 1.11 MBq (30 uCi) of either sodium iodide I-125 or I-131:

(i) involving the wrong individual, or wrong radiopharmaceutical; or

(ii) when both the administered dosage differs from the prescribed dosage by more than 20 percent of the prescribed dosage and the difference between the administrated dosage and prescribed dosage exceeds 1.11 MBq (30 uCi).

(b) A therapeutic radiopharmaceutical dosage, other than sodium iodide I-125 or I-131:

(i) involving the wrong individual, wrong radiopharmaceutical, or wrong route of administration; or

(ii) when the administered dosage differs from the

prescribed dosage by more than 20 percent of the prescribed dosage.

(c) A gamma stereotactic radiosurgery radiation dose:

(i) involving the wrong individual or wrong treatment site; or

(ii) when the calculated total administered dose differs from the total prescribed dose by more than ten percent of the total prescribed dose.

(d) A teletherapy radiation dose:

(i) involving the wrong individual, wrong mode of treatment, or wrong treatment site;

(ii) when the treatment consists of three or fewer fractions and the calculated total administered dose differs from the total prescribed dose by more than ten percent of the total prescribed dose;

(iii) when the calculated weekly administered dose exceeds the weekly prescribed dose by 30 percent or more of the weekly prescribed dose; or

(iv) when the calculated total administered dose differs from the total prescribed dose by more than 20 percent of the total prescribed dose.

(e) A brachytherapy radiation dose:

(i) involving the wrong individual, wrong radionuclide, or wrong treatment site (excluding, for permanent implants, seeds that were implanted in the correct site but migrated outside the treatment site);

(ii) involving a sealed source that is leaking;

(iii) when, for a temporary implant, one or more sealed sources are not removed upon completion of the procedure; or

(iv) when the calculated administered dose differs from the prescribed dose by more than 20 percent of the prescribed dose.

(f) A diagnostic radiopharmaceutical dosage, other than quantities greater than 1.11 MBq (30 uCi) of either sodium iodide I-125 or I-131, or both:

(i) involving the wrong individual, wrong radiopharmaceutical, wrong route of administration, or when the administered dosage differs from the prescribed dosage; and

(ii) when the dose to the individual exceeds 0.05 Sv (five rems) effective dose equivalent or 0.5 Sv (50 rems) dose equivalent to any individual organ.

"Mobile nuclear medicine service" means the transportation and medical use of radioactive material.

"Output" means the exposure rate, dose rate, or a quantity related in a known manner to these rates from a teletherapy unit for a specified set of exposure conditions.

"Pharmacist" means an individual licensed by a State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to practice pharmacy.

"Podiatric use" means the intentional external administration of the radiation from radioactive material to human beings in the practice of podiatry in accordance with a license issued by this State.

"Podiatrist" means an individual licensed by this State to practice podiatry.

"Prescribed dosage" means the quantity of radiopharmaceutical activity as documented:

(a) in a written directive; or

(b) either in the diagnostic clinical procedures manual or in an appropriate record in accordance with the directions of the authorized user for diagnostic procedures.

"Prescribed dose" means:

(a) for gamma stereotactic radiosurgery, the total dose as documented in the written directive;

(b) for teletherapy, the total dose and dose per fraction as documented in the written directive; or

(c) for brachytherapy, either the total source strength and exposure time or the total dose, as documented in the written directive.

"Radiation Safety Officer" means the individual identified as the Radiation Safety Officer on a license issued by the Executive Secretary.

"Recordable event" means the administration of:

(a) a radiopharmaceutical or radiation without a written directive where a written directive is required;

(b) a radiopharmaceutical or radiation where a written directive is required without daily recording of each administered radiopharmaceutical dosage or radiation dose in the appropriate record;

(c) a radiopharmaceutical dosage greater than 1.11 MBq (30 uCi) of either sodium iodide I-125 or I-131 when both:

(i) the administered dosage differs from the prescribed dosage by more than ten percent of the prescribed dosage, and

(ii) the difference between the administered dosage and prescribed dosage exceed 555 kBq (15 uCi);

(d) A therapeutic radiopharmaceutical dosage, other than sodium iodide I-125 or I-131, when the administered dosage differs from the prescribed dosage by more than ten percent of the prescribed dosage;

(e) A teletherapy radiation dose when the calculated weekly administered dose exceeds the weekly prescribed dose by 15 percent or more of the weekly prescribed dose; or

(f) A brachytherapy radiation dose when the calculated administered dose differs from the prescribed dose by more than ten percent of the prescribed dose.

"Teletherapy" means therapeutic irradiation in which the source of radiation is at a distance from the body.

"Teletherapy physicist" means the individual identified as the teletherapy physicist on a license issued by the Executive Secretary.

"Visiting authorized user" means an authorized user who is not identified as an authorized user on the license of the licensee being visited.

"Written directive" means an order in writing for a specific patient or human research subject, dated and signed by an authorized user prior to the administration of a radiopharmaceutical or radiation, except as specified in paragraph (f) of this definition, containing the following information:

(a) for any administration of quantities greater than 1.11 MBq (30 uCi) of either sodium iodide I-125 or I-131: the dosage;

(b) for a therapeutic administration of a radiopharmaceutical other than sodium iodide I-125 or I-131: the radiopharmaceutical, dosage, and route of administration;

(c) for gamma stereotactic radiosurgery: target coordinates, collimator size, plug pattern, and total dose;

(d) for teletherapy: the total dose, dose per fraction, treatment site, and overall treatment period;

(e) for high-dose-rate remote afterloading brachytherapy: the radioisotope, treatment site, and total dose; or

(f) for all other brachytherapy:

(i) prior to implantation: the radionuclide, number of sources, and source strengths; and

(ii) after implantation but prior to completion of the procedure: the radionuclide, treatment site, and total source strength and exposure time, or equivalently, the total dose.

R313-32-6. Provisions for Research Involving Human Subjects.

A licensee may conduct research involving human subjects using radioactive material provided that the research is conducted, funded, supported, or regulated by another Federal Agency which has implemented the Federal Policy for the Protection of Human Subjects. Otherwise, a licensee shall apply for and receive approval of a specific amendment to its Utah license before conducting such research. Both types of licensees shall, at a minimum, obtain informed consent from the human subjects and obtain prior review and approval of the research activities by an "Institutional Review Board" in accordance with the meaning of these terms as defined and described in the Federal Policy for the Protection of Human Subjects.

R313-32-7. FDA, other Federal, and State Requirements.

Nothing in R313-32 relieves the licensee from complying with applicable FDA, other Federal, and State requirements governing radioactive drugs or devices.

R313-32-11. License Required.

(1) A person shall not manufacture, produce, acquire, receive, possess, use, or transfer radioactive material for medical use except in accordance with a specific license issued by the Executive Secretary, the Nuclear Regulatory Commission, or an Agreement State, or as allowed in R313-32-11(2) or (3).

(2) An individual shall receive, possess, use, or transfer radioactive material in accordance with the Utah Radiation Control Rules under the supervision of an authorized user as provided in R313-32-25, unless prohibited by license condition.

(3) An individual may prepare unsealed radioactive material for medical use in accordance with R313-32 under the supervision of an authorized nuclear pharmacist or authorized user as provided in R313-32-25, unless prohibited by license condition.

R313-32-12. Application for License, Amendment, or Renewal.

(1) If the application is for medical use sited in a medical institution, only the institution's management may apply. If the application is for medical use not sited in a medical institution, any person may apply.

(2) An application for a license for medical use of radioactive material as described in R313-32-100, R313-32-200, R313-32-300, R313-32-400, and R313-32-500 must be made by filing of Form DRC-02, "Application for Materials License." For guidance in completing the form, refer to the instructions in the most current versions of the appropriate Regulatory Guides. A request for a license amendment or renewal may be submitted in a letter format.

(3) An applicant that satisfies the requirements specified in R313-22-50(2) may apply for a Type A specific license of broad scope.

R313-32-13. License Amendment.

A licensee shall apply for and receive a license amendment:

(1) before it receives or uses radioactive material for a clinical procedure permitted under R313-32 but not permitted by the license issued pursuant to R313-32;

(2) before it permits anyone to work as an authorized user or authorized nuclear pharmacist under the license, except an individual who is:

(a) an authorized user certified by the organizations specified in paragraph (1) of R313-32-910, R313-32-920, R313-32-930, R313-32-940, R313-32-950, or R313-32-960;

(b) an authorized nuclear pharmacist certified by the organization specified in paragraph (1) of R313-32-980;

(c) identified as an authorized user or an authorized nuclear pharmacist on a Nuclear Regulatory Commission or an Agreement State license that authorizes the use of radioactive material in medical use or in the practice of nuclear pharmacy, respectively, or

(d) identified as an authorized user or an authorized nuclear pharmacist on a permit issued by the Executive Secretary, the Nuclear Regulatory Commission or an Agreement State specific licensee of broad scope that is authorized to permit the use of radioactive material in medical use or in the practice of nuclear pharmacy, respectively.

(3) before it changes Radiation Safety Officers or Teletherapy Physicists;

(4) before it orders radioactive material in excess of the amount, or radionuclide or form different than authorized on the license; and

(5) before it adds to or changes the address or addresses of use identified on the license.

R313-32-14. Notifications.

(1) A licensee shall provide to the Executive Secretary a copy of the board certification, the Nuclear Regulatory Commission or Agreement State license, or the permit issued by a licensee of broad scope for each individual no later than 30 days after the date that the licensee permits the individual to work as an authorized user or an authorized nuclear pharmacist pursuant to R313-32-12(2)(a) through (2)(d).

(2) A licensee shall notify the Executive Secretary by letter no later than 30 days after:

(a) an authorized user, an authorized nuclear pharmacist, Radiation Safety Officer, or teletherapy physicist permanently discontinues performance of duties under the license or has a name change; or

(b) the licensee's mailing address changes.

(3) The licensee shall mail the documents required in R313-32-14 to the address identified in R313-12-110.

R313-32-15. Exemptions Regarding Type A Specific Licenses of Broad Scope.

A licensee possessing a Type A specific license of broad scope for medical use is exempt from the following:

(1) The provisions of R313-32-13(2);

(2) The provisions of R313-32-13(5) regarding additions to or changes in the areas of use only at the addresses specified in the license;

(3) The provisions of R313-32-14(1); and

(4) The provisions of R313-32-14(2)(a) for an authorized user or an authorized nuclear pharmacist.

R313-32-18. License Issuance.

The Executive Secretary shall issue a license for the medical use of radioactive material for a term of five years provided the following requirements are met:

(1) The applicant has filed form DRC-02 "Application for Materials License - Medical" in accordance with the instructions in R313-22-32.

(2) The applicant has paid any applicable fee as provided in R313-70.

(3) The Executive Secretary finds the applicant equipped and committed to observe the safety standards established in R313-15 for the protection of the public health and safety.

(4) In addition to the requirements set forth in R313-22-33 a specific license for human use of radioactive material in institutions will be issued if:

(a) the applicant has appointed a radiation safety committee to coordinate the use of radioactive material throughout that institution and to maintain surveillance over the institution's radiation safety program; and

(b) if the application is for a license to use unspecified quantities or multiple types of radioactive material, the applicant's staff has training and experience in the use of a variety or radioactive materials for a variety of human uses, and meets the training and experience requirements of R313-32.

(5) A specific license for the human use of radioactive material will be issued to an individual physician if the following are complied with:

(a) The applicant has access to a hospital possessing adequate facilities to hospitalize and monitor the applicant's radioactive patients whenever it is advisable.

(b) The applicant has training and experience as required by R313-32, in the handling and administration of radioactive material and, where applicable, the clinical management of radioactive patients.

(c) The application is for use in the applicant's practice in an office outside a medical institution.

(d) The Executive Secretary shall not approve an application by an individual physician or group of physicians for a specific license to receive, possess or use radioactive material on the premises of a medical institution unless:

(i) the use of radioactive material is limited to:

(A) the administration of radiopharmaceuticals for diagnostic or therapeutic purposes;

(B) the performance of diagnostic studies on patients to whom a radiopharmaceutical has been administered;

(C) the performance of in vitro diagnostic studies;

(D) the calibration and quality control checks of radioactive assay instrumentation, radiation safety instrumentation and diagnostic instrumentation;

(ii) the physician brings the radioactive material with him and removes the radioactive material when he departs. The institution cannot receive, possess or store radioactive material other than the amount of material remaining in the patient; or

(iii) the medical institution does not hold a radioactive material license issued pursuant to the provisions of R313-32-18(4).

R313-32-19. Specific Exemptions.

The Board may, upon application of any interested person or upon its own initiative, grant exemptions from the rules in R313-32 as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest. The Board will review requests for exemptions from training and experience requirements with the assistance of the Executive Secretary.

R313-32-20. ALARA Program.

(1) The licensee shall develop and implement a written radiation protection program that includes provisions for keeping doses ALARA.

(2) To satisfy the requirement of R313-32-20(1) one of the following shall be implemented:

(a) At a medical institution, management, the Radiation Safety Officer, and authorized users shall participate in the program as requested by the Radiation Safety Committee.

(b) For licensees that are not medical institutions, management and authorized users shall participate in the program as requested by the Radiation Safety Officer.

(3) The program shall include notice to workers of the program's existence and workers' responsibility to help keep dose equivalents ALARA, a review of summaries of the types and amounts of radioactive material used, occupational doses, changes in radiation safety procedures and safety measures, and continuing education and training for personnel who work with or in the vicinity of radioactive material. The purpose of the review is to ensure that licensees make a reasonable effort to maintain individual and collective occupational doses ALARA.

R313-32-21. Radiation Safety Officer.

(1) A licensee shall appoint a Radiation Safety Officer responsible for implementing the radiation safety program. The licensee, through the Radiation Safety Officer, shall ensure that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's radioactive material program.

(2) The Radiation Safety Officer shall:

(a) investigate overexposures, accidents, spills, losses, thefts, unauthorized receipts, uses, transfers, disposals, misadministrations, and other deviations from approved radiation safety practices and implement corrective actions as necessary;

(b) establish, collect in one binder or file, and implement written policy and procedures for:

(i) authorizing the purchase of radioactive material;

(ii) receiving and opening packages of radioactive material;

(iii) storing radioactive material;

(iv) keeping an inventory record of radioactive material;

(v) using radioactive material safely;

(vi) taking emergency action if control of radioactive material is lost;

(vii) performing periodic radiation surveys;

(viii) performing checks of survey instruments and other safety equipment;

(ix) disposing of radioactive material;

(x) training personnel who work in or frequent areas where radioactive material is used or stored;

(xi) keeping a copy of all records and reports required by the Utah Radiation Control Rules, a copy of these rules, a copy of each licensing request, license and amendment, and written policy and procedures required by the rules;

(c) brief management once a year on the radioactive material program;

(d) establish personnel exposure investigational levels that, when exceeded, will initiate an investigation by the Radiation Safety Officer of the cause of the exposure;

(e) establish personnel exposure investigational levels that, when exceeded, will initiate a prompt investigation by the Radiation Safety Officer of the cause of the exposure and a consideration of actions that might be taken to reduce the probability of recurrence;

(f) for medical use not at a medical institution, approve or disapprove radiation safety program changes with the advice and consent of management; and

(g) for medical use at a medical institution, assist the Radiation Safety Committee in the performance of its duties.

R313-32-22. Radiation Safety Committee.

The medical institution licensee shall establish a Radiation Safety Committee to oversee the use of radioactive material.

(1) The Committee shall meet the following administrative requirements:

(a) Membership shall consist of at least three individuals and shall include an authorized user of each type of use permitted by the license, the Radiation Safety Officer, a representative of the nursing service, and a representative of management who is neither an authorized user nor a Radiation Safety Officer. Other members may be included as the licensee deems appropriate.

(b) The Committee shall meet at least quarterly.

(c) To establish a quorum and to conduct business, at least one-half of the Committee's membership shall be present, including the Radiation Safety Officer and the management's representative.

(d) The minutes of each Radiation Safety Committee meeting shall include:

(i) the date of the meeting;

(ii) members present;

(iii) members absent;

(iv) summary of deliberations and discussions;

(v) recommended actions and the numerical results of all ballots; and

(vi) ALARA program reviews described in R313-32-20.

(e) The Committee shall promptly provide the members with copies of the meeting minutes, and retain one copy for the duration of the license.

(2) To oversee the use of licensed material, the Committee shall:

(a) review recommendations on ways to maintain individual and collective doses ALARA;

(b)(i) review, on the basis of safety and with regard to the training and experience standards in R313-32-900 through R313-32-981, and approve or disapprove any individual who is to be listed as an authorized user, an authorized nuclear pharmacist, the Radiation Safety Officer, or a Teletherapy Physicist before submitting a license application or request for amendment or renewal; or

(ii) review, pursuant to R313-32-13(2)(a) through (2)(d), on the basis of the board certification, the license, or the permit identifying an individual, and approve or disapprove any individual prior to allowing that individual to work as an authorized user or authorized nuclear pharmacist;

(c) review on the basis of safety, and approve with the advice and consent of the Radiation Safety Officer and the management representative, or disapprove minor changes in radiation safety procedures that are not potentially important to safety and are permitted under R313-32-31;

(d) review quarterly, with the assistance of the Radiation Safety Officer, a summary of the occupational radiation dose records of personnel working with radioactive material;

(e) review quarterly, with the assistance of the Radiation Safety Officer, incidents involving radioactive material with respect to cause and subsequent actions taken; and

(f) review annually, with the assistance of the Radiation Safety Officer, the radiation safety program.

R313-32-23. Statements of Authority and Responsibilities.

(1) A licensee shall provide the Radiation Safety Officer, and at a medical institution the Radiation Safety Committee, sufficient authority, organizational freedom, and management prerogative, to:

(a) identify radiation safety problems;

(b) initiate, recommend, or provide corrective actions; and

(c) verify implementation of corrective actions.

(2) A licensee shall establish and state in writing the authorities, duties, responsibilities, and radiation safety activities of the Radiation Safety Officer, and at a medical institution the Radiation Safety Committee, and retain the current edition of these statements as a record until the Executive Secretary terminates the license.

R313-32-25. Supervision.

(1) A licensee that permits the receipt, possession, use or transfer of radioactive material by an individual under the supervision of an authorized user as allowed by R313-32-11(2) shall:

(a) instruct the supervised individual in the principles of radiation safety appropriate to that individual's use of radioactive material and in the licensee's written quality management program;

(b) require the supervised individual to follow the instructions of the supervising authorized user, follow the written radiation safety and quality management procedures established by the licensee, and comply with the Utah Radiation Control Rules and the license conditions with respect to the use of radioactive material; and

(c) periodically review the supervised individual's use of radioactive material and the records kept to reflect this use.

(2) A licensee that permits the preparation of radioactive

material for medical use by an individual under the supervision of an authorized nuclear pharmacist or physician who is an authorized user, as allowed by R313-32-11(3), shall:

(a) instruct the supervised individual in the preparation of radioactive material for medical use and the principles of and procedures for radiation safety and in the licensee's written quality management program, as appropriate to that individual's use of radioactive material;

(b) require the supervised individual to follow the instructions given pursuant to R313-32-25(2)(a) and to comply with these rules and license conditions; and

(c) require the supervising authorized nuclear pharmacist or physician who is an authorized user to periodically review the work of the supervised individual as it pertains to preparing radioactive material for medical use and the records kept to reflect that work.

(3) A licensee that supervises an individual is responsible for the acts and omissions of the supervised individual.

R313-32-29. Administrative Requirements that Apply to the Providers of Mobile Nuclear Medicine Service.

(1) The Executive Secretary will license mobile nuclear medicine service only in accordance with R313-32-100, R313-32-200, and R313-32-500.

(2) Mobile nuclear medicine service licensees shall obtain a letter signed by the management of each client for which services are rendered that authorizes use of radioactive material at the client's address of use. The mobile nuclear medicine service licensee shall retain the letter for three years after the last provision of service.

(3) If a mobile nuclear medicine service provides services that the client is also authorized to provide, the client is responsible for assuring that services are conducted in accordance with the rules while the mobile nuclear medicine service is under the client's direction.

(4) A mobile nuclear medicine service shall not order radioactive material to be delivered directly from the manufacturer or distributor to the client's address of use.

R313-32-31. Radiation Safety Program Changes.

(1) A licensee may make minor changes in radiation safety procedures that are not potentially important to safety, i.e., ministerial changes, that were described in the application for license, renewal, or amendment except for those changes in R313-32-13 and R313-32-606. A licensee is responsible for assuring that any change made is in compliance with the requirements of the rules and the license.

(2) A licensee shall retain a record of each change until the license has been renewed or terminated. The record shall include the effective date of the change, a copy of the old and new radiation safety procedures, the reason for the change, a summary of radiation safety matters that were considered before making the change, the signature of the Radiation Safety Officer, and the signatures of the affected authorized users and of management or, in a medical institution, the Radiation Safety Committee's chairman and the management representative.

R313-32-32. Quality Management Program.

(1) The applicant or licensee shall establish and maintain a written quality management program to provide high confidence that radioactive material or radiation from radioactive material will be administered as directed by the authorized user. The quality management program shall include written policies and procedures to meet the following specific objectives:

(a) that, prior to administration, a written directive is prepared for:

(i) teletherapy radiation doses;

(ii) gamma stereotactic radiosurgery radiation doses;

(iii) brachytherapy radiation doses;

(iv) administration of quantities greater than 1.11 MBq (30 uCi) of either sodium iodide I-125 or I-131;

(v) therapeutic administration of a radiopharmaceutical, other than sodium iodide I-125 or I-131;

(b) that the following are exceptions to the written directive:

(i) if, because of the patient's condition, a delay in order to provide a written revision to an existing written directive would jeopardize the patient's health, an oral revision to an existing written directive will be acceptable, provided that the oral revision is documented immediately in the patient's record and a revised written directive is signed by the authorized user within 48 hours of the oral revision;

(ii) also, a written revision to an existing written directive may be made for a diagnostic or therapeutic procedure provided that the revision is dated and signed by an authorized user prior to the administration of the radiopharmaceutical dosage, the brachytherapy dose, the gamma stereotactic radiosurgery dose, the teletherapy dose, or the next teletherapy fractional dose; or

(iii) if, because of the emergent nature of the patient's condition, a delay in order to provide a written directive would jeopardize the patient's health, an oral directive will be acceptable, provided that the information contained in the oral directive is documented immediately in the patient's record and a written directive is prepared within 24 hours of the oral directive;

(c) that, prior to each administration, the patient's or human research subject's identity is verified by more than one method as the individual named in the written directive;

(d) that final plans of treatment and related calculations for brachytherapy, teletherapy, and gamma stereotactic radiosurgery are in accordance with the respective written directives;

(e) that each administration is in accordance with the written directive; and

(f) that each unintended deviation from the written directive is identified and evaluated, and appropriate action is taken.

(2) The licensee shall:

(a) develop procedures for and conduct a review of the quality management program including, since the last review, an evaluation of:

(i) a representative sample of patient and human research subject administrations,

(ii) all recordable events, and

(iii) all misadministrations to verify compliance with each aspect of the quality management program; these reviews shall be conducted at intervals no greater than 12 months;

(b) evaluate these reviews to determine the effectiveness

of the quality management program and, if required, make modifications to meet the objectives of R313-32-32(1); and

(c) retain records of the review, including the evaluations and findings of the review, in an auditable form for three years.

(3) The licensee shall evaluate and respond, within 30 days after discovery of the recordable event, to each recordable event by:

(a) assembling the relevant facts including the cause;

(b) identifying what, if applicable, corrective action is required to prevent recurrence; and

(c) retaining a record, in an auditable form, for three years, of the relevant facts and what corrective action, if applicable, was taken.

(4) The licensee shall retain:

(a) a written directive; and

(b) a record of each administered radiation dose or radiopharmaceutical dosage where a written directive is required in R313-32-32(1)(a), in an auditable form, for three years after the date of administration.

(5) The licensee may make modifications to the quality management program to increase the program's efficiency provided the program's effectiveness is not decreased. The licensee shall furnish the modification to the Executive Secretary within 30 days after the modification has been made.

(6)(a) Applicants for a new license, as applicable, shall submit to the Executive Secretary in accordance with R313-12-110 a quality management program as part of the application for a license and implement the program upon issuance of the license by the Executive Secretary.

(b) Existing licensees, as applicable, shall submit to the Executive Secretary in accordance with R313-12-110, prior to March 1, 1995, a written certification that the quality management program has been implemented along with a copy of the program.

R313-32-33. Notifications, Reports and Records of Misadministrations.

(1) For a misadministration:

(a) the licensee shall notify the Executive Secretary by telephone no later than the next calendar day after discovery of the misadministration.

(b) the licensee shall submit a written report to the Executive Secretary within 15 days after discovery of the misadministration. The written report shall include the licensee's name; the prescribing physician's name; a brief description of the event; why the event occurred; the effect on the individual who received the misadministration; what improvements are needed to prevent recurrence; actions taken to prevent recurrence; whether the licensee notified the individual (or the individual's responsible relative or guardian), and if not, why not; and if there was notification, what information was provided. The report must not include the individual's name or any other information that could lead to identification of the individual. To meet the requirements of R313-32-33, the notification of the individual receiving the misadministration may be made instead to that individual's responsible relative or guardian, when appropriate.

(c) the licensee shall notify the referring physician of the affected patient and the patient, and also notify the individual receiving the misadministration of the misadministration no later than 24 hours after its discovery, unless the referring physician personally informs the licensee either that he will inform the individual or that, based on medical judgment, telling the individual would be harmful. The licensee is not required to notify the individual without first consulting the referring physician. If the referring physician or the individual receiving the misadministration cannot be reached within 24 hours, the licensee shall notify the individual as soon as possible thereafter. The licensee may not delay any appropriate medical care for the individual because of any delay in notification.

(d) if the individual was notified, the licensee shall also furnish, within 15 days after discovery of the misadministration, a written report to the individual by sending either:

(i) a copy of the report that was submitted to the Executive Secretary; or

(ii) a brief description of both the event and the consequences as they may affect the individual, provided a statement is included that the report submitted to the Executive Secretary can be obtained from the licensee.

(2) The licensee shall retain a record of each misadministration for five years. The record shall contain the names of all individuals involved (including the prescribing physician, allied health personnel, the individual who received the misadministration, and that individual's referring physician, if applicable), the individual's social security number or other identification number if one has been assigned, a brief description of the misadministration, why it occurred, the effect on the individual, improvements needed to prevent recurrence, and the actions taken to prevent recurrence.

(3) Aside from the notification requirement, nothing in R313-32-33 affects any rights or duties of licensees and physicians in relation to each other, to individuals receiving misadministrations, or to that individual's responsible relative or guardian.

R313-32-49. Suppliers for Sealed Sources or Devices for Medical Use.

A licensee may use for medical use only:

(1) Sealed sources or devices manufactured, labeled, packaged, and distributed in accordance with a license issued pursuant to the rules in R313-22 and R313-22-75(10) or the equivalent requirements of the Nuclear Regulatory Commission or an Agreement State; or

(2) Teletherapy sources manufactured and distributed in accordance with a license issued pursuant to R313-22 or the equivalent requirements of the Nuclear Regulatory Commission or an Agreement State.

R313-32-50. Possession, Use, Calibration, and Check of Dose Calibrators.

(1) A licensee shall possess and use a dose calibrator to measure the activity of dosages of photon-emitting radionuclides prior to administration to each patient or human research subject.

(2) A licensee shall:

(a) check each dose calibrator for constancy with a dedicated check source at the beginning of each day of use. To satisfy this requirement, the check shall be done on a frequently

used setting with a sealed source of not less than 370 kBq (ten uCi) of radium-226 or 1.85 MBq (50 uCi) for a photon-emitting radionuclide;

(b) test each dose calibrator for accuracy upon installation and at least annually thereafter by assaying at least two sealed sources containing different radionuclides whose activity the manufacturer has determined within five percent of its stated activity, whose activity is at least 370 kBq (ten uCi) for radium-226 and 1.85 MBq (50 uCi) for a photon-emitting radionuclide, and at least one of which has a principal photon energy between 100 keV and 500 keV;

(c) test each dose calibrator for linearity upon installation and at least quarterly thereafter over a range from the highest dosage that will be administered to a patient or human research subject to 1.1 MBq (30 uCi); and

(d) test each dose calibrator for geometry dependence upon installation over the range of volumes and volume configurations for which it will be used. The licensee shall keep a record of this test for the duration of the use of the dose calibrator.

(3) A licensee shall also perform appropriate checks and tests required by R313-32-50 following adjustment or repair of the dose calibrator.

(4) A licensee shall mathematically correct dosage readings for geometry or linearity errors that exceed ten percent if the dosage is greater than 370 kBq (ten uCi) and shall repair or replace the dose calibrator if the accuracy or constancy error exceeds ten percent.

(5) A licensee shall retain a record of each check and test required by R313-32-50 for three years unless directed otherwise. The records required in R313-32-50(2)(a) through (2)(d) shall include:

(a) for R313-32-50(2)(a), the model and serial number of the dose calibrator, the identity of the radionuclide contained in the check source, the date of the check, the activity measured, and the initials of the individual who performed the check;

(b) for R313-32-50(2)(b), the model and serial number of the dose calibrator, the model and serial number of each source used, the identity of the radionuclide contained in the source and its activity, the date of the test, the results of the test, and the identity of the individual performing the test;

(c) for R313-32-50(2)(c), the model and serial number of the dose calibrator, the calculated activities, the measured activities, the date of the test, and the identity of the individual performing the test; and

(d) for R313-32-50(2)(d), the model and serial number of the dose calibrator, the configuration of the source measured, the activity measured for each volume measured, the date of the test, and the identity of the individual performing the test.

R313-32-51. Calibration and Check of Survey Instruments.

(1) A licensee shall calibrate the survey instruments used to show compliance with R313-32 before first use, annually, and following repair. The licensee shall:

(a) calibrate all scales with readings up to ten mSv (1000 mrem) per hour with a radiation source;

(b) calibrate two separated readings on each scale that shall be calibrated. The readings shall be separated by 50 percent of the scale reading; and

(c) conspicuously note on the instrument the apparent exposure rate from a dedicated check source as determined at the time of calibration, and the date of calibration.

(2) When calibrating a survey instrument, the licensee shall consider a point as calibrated if the indicated exposure rate differs from the calculated exposure rate by not more than 20 percent, and shall conspicuously attach a correction chart or graph to the instrument.

(3) A licensee shall check each survey instrument for proper operation with the dedicated check source each day of use. A licensee is not required to keep records of these checks.

(4) A licensee shall retain a record of each survey instrument calibration for three years. The record shall include:

(a) a description of the calibration procedure; and

(b) the date of the calibration, a description of the source used and the certified exposure rates from the source, and the rates indicated by the instrument being calibrated, the correction factors deduced from the calibration data, and the signature of the individual who performed the calibration.

R313-32-52. Possession, Use, Calibration, and Check of Instruments to Measure Dosages or Alpha- or Beta-emitting Radionuclides.

(1) R313-32-52 does not apply to unit dosages of alpha- or beta-emitting radionuclides that are obtained from a manufacturer or preparer licensed pursuant to R313-22-75(9) or equivalent requirements of the Nuclear Regulatory Commission or an Agreement State.

(2) For other than unit dosages obtained pursuant to R313-32-52(1), a licensee shall possess and use instrumentation to measure the radioactivity of alpha- or beta-emitting radionuclides. The licensee shall have procedures for use of the instrumentation. The licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha- or beta-emitting radionuclides prior to administration to each patient or human research subject. In addition, the licensee shall:

(a) perform tests before initial use, periodically, and following repair, on each instrument for accuracy, linearity, and geometry dependence, as appropriate for the use of the instrument; and make adjustments when necessary; and

(b) check each instrument for constancy and proper operation at the beginning of each day of use.

R313-32-53. Measurement of Dosages of Unsealed Radioactive Material for Medical Use.

A licensee shall:

(1) measure the activity of each dosage of a photon-emitting radionuclide prior to medical use;

(2) measure, by direct measurement or by combination of measurements and calculations, the activity of each dosage of an alpha- or beta-emitting radionuclide prior to medical use, except for unit dosages obtained from a manufacturer or preparer licensed pursuant to R313-22-75(9) or equivalent requirements of the Nuclear Regulatory Commission or an Agreement State; and

(3) retain a record of the measurements required by R313-32-53 for three years. To satisfy this requirement, the record

shall contain the following:

(a) generic name, trade name, or abbreviation of the radiopharmaceutical, its lot number, and expiration dates and the radionuclide;

(b) patient's or human research subject's name, and identification number if one has been assigned;

(c) prescribed dosage and activity of the dosage at the time of measurement, or a notation that the total activity is less than 1.1 MBq (30 uCi);

(d) date and time of the measurement; and

(e) initials of the individual who made the record.

R313-32-57. Authorization for Calibration and Reference Sources.

Persons authorized by R313-32-11 for medical use of radioactive material may receive, possess, and use the following radioactive material for check, calibration, and reference use:

(1) sealed sources manufactured and distributed by a person licensed pursuant to R313-22-75(10) or equivalent Nuclear Regulatory Commission or Agreement State regulations and that do not exceed 555 MBq (15 mCi) each;

(2) radioactive material listed in R313-32-100 or R313-32-200 with a half-life not longer than 100 days in individual amounts not to exceed 555 MBq (15 mCi);

(3) radioactive material listed in R313-32-100 or R313-32-200 with a half-life longer than 100 days in individual amounts not to exceed 7.4 MBq (200 uCi); and

(4) technetium-99m in individual amounts not to exceed 1.85 GBq (50 mCi).

R313-32-59. Requirements for Possession of Sealed Sources and Brachytherapy Sources.

(1) A licensee in possession of sealed sources or brachytherapy sources shall follow the radiation safety and handling instructions supplied by the manufacturer, and shall maintain the instructions for the duration of source use in a legible form convenient to users.

(2) A licensee in possession of a sealed source shall:

(a) test the source for leakage before its first use unless the licensee has a certificate from the supplier indicating that the source was tested within six months before transfer to the licensee; and

(b) test the source for leakage at intervals not to exceed six months or at other intervals approved by the Executive Secretary, the Nuclear Regulatory Commission or an Agreement State and described in the label or brochure that accompanies the source.

(3) To satisfy the leak test requirements of R313-32-59, the licensee must:

(a) take a wipe sample from the sealed source or from the surfaces of the device in which the sealed source is mounted or stored on which radioactive contamination might be expected to accumulate or wash the source in a small volume of detergent solution and treat the entire volume as the sample;

(b) take teletherapy and other device source test samples when the source is in the "off" position; and

(c) measure the sample so that the leakage test can detect the presence of 185 Bq (0.005 uCi) of radioactive material on the sample.

(4) A licensee shall retain leakage test records for five years. The records shall contain the model number, the serial number if assigned, of each source tested, the identity of each source radionuclide and its estimated activity, the measured activity of each test sample expressed in becquerels or microcuries, a description of the method used to measure each test sample, the date of the test, and the signature of the Radiation Safety Officer.

(5) If the leakage test reveals the presence of 185 Bq (0.005 uCi) or more of removable contamination, the licensee shall:

(a) immediately withdraw the sealed source from use and store it in accordance with the requirements in R313-15; and

(b) file a report within five days of the leakage test with the Executive Secretary describing the equipment involved, the test results, and the action taken.

(6) A licensee need not perform a leakage test on the following sources:

(a) sources containing only radioactive material with a half-life of less than 30 days;

(b) sources containing only radioactive material as a gas;

(c) sources containing 3.7 MBq (100 uCi) or less of beta or gamma-emitting material or 370 kBq (ten uCi) or less of alpha-emitting material;

(d) sources stored and not being used. The licensee shall, however, test each source for leakage before use or transfer unless it has been leakage-tested within six months before the date of use or transfer; and

(e) seeds of iridium-192 encased in nylon ribbon.

(7) A licensee in possession of a sealed source or brachytherapy source shall conduct a quarterly physical inventory of all sources in its possession. The licensee shall retain inventory records for five years. The inventory records shall contain the model number of each source, and serial number if one has been assigned, the identity of each source radionuclide and its nominal activity, the location of each source, and the signature of the Radiation Safety Officer.

(8) A licensee in possession of a sealed source or brachytherapy source shall measure the ambient dose rates quarterly in all areas where sources are stored. This does not apply to teletherapy sources in teletherapy units or sealed sources in diagnostic devices.

(9) A licensee shall retain a record of each survey required in R313-32-59(8) for three years. The record shall include the date of the survey, a plan of each area that was surveyed, the measured dose rate at several points in each area expressed in microsieverts or millirem per hour, the survey instrument used, and the signature of the Radiation Safety Officer.

R313-32-60. Syringe Shields and Labels.

(1) A licensee shall keep syringes that contain radioactive material to be administered in a radiation shield.

(2) To identify its contents, a licensee shall conspicuously label each syringe or syringe radiation shield that contains a syringe with a radiopharmaceutical. The label shall show the radiopharmaceutical name or its abbreviation, the clinical procedure to be performed, or the patient's or the human research subject's name.

(3) A licensee shall require each individual who prepares

a radiopharmaceutical kit to use a syringe radiation shield when preparing the kit and shall require each individual to use a syringe radiation shield when administering a radiopharmaceutical by injection unless the use of the shield is contraindicated for that patient or human research subject.

R313-32-61. Vial Shields and Labels.

(1) A licensee shall require each individual preparing or handling a vial that contains a radiopharmaceutical to keep the vial in a vial radiation shield.

(2) To identify its contents, a licensee shall conspicuously label each vial radiation shield that contains a vial of a radiopharmaceutical. The label shall show the radiopharmaceutical name or its abbreviation.

R313-32-70. Surveys for Contamination and Ambient Radiation Exposure Rate.

(1) A licensee shall survey with a radiation detection survey instrument at the end of each day of use all areas where radiopharmaceuticals are routinely prepared for use or administered.

(2) A licensee shall survey with a radiation detection survey instrument at least once each week all areas where radiopharmaceuticals or radiopharmaceutical waste is stored.

(3) A licensee shall conduct the surveys required by R313-32-70(1) and (2) so as to be able to detect dose rates as low as one uSv (0.1 mrem) per hour.

(4) A licensee shall establish radiation dose rate trigger levels for the surveys required by R313-32-70(1) and (2). A licensee shall require that the individual performing the survey immediately notify the Radiation Safety Officer if a dose rate exceeds a trigger level.

(5) A licensee shall survey for removable contamination once each week all areas where radiopharmaceuticals are routinely prepared for use, administered, or stored.

(6) A licensee shall conduct the survey required by R313-32-70(5) so as to be able to detect contamination on each wipe sample of 2200 disintegrations per minute, (0.001 uCi or 37 Bq).

(7) A licensee shall establish removable contamination trigger levels for the surveys required by R313-32-70(5). A licensee shall require that the individual performing the survey immediately notify the Radiation Safety Officer if contamination exceeds the trigger level.

(8) A licensee shall retain a record of each survey for three years. The record shall include the date of the survey, a plan of each area surveyed, the trigger level established for each area, the detected dose rate at several points in each area expressed in microsieverts or millirem per hour or the removable contamination in each area expressed in disintegrations per minute (becquerels or curies) per 100 square centimeters, the instrument used to make the survey or analyze the samples, and the initials of the individual who performed the survey.

R313-32-75. Release of Individuals Containing Radiopharmaceuticals or Permanent Implants.

(1) The licensee may authorize the release from its control of any individual who has been administered radiopharmaceuticals or permanent implants containing radioactive material if the total effective dose equivalent to any other individual from exposure to the released individual is not likely to exceed 5 mSv (0.5 rem).

NOTE: The Nuclear Regulatory Commission Regulatory Guide 8.39, "Release of Patients Administered Radioactive Materials," describes methods for calculating doses to other individuals and contains tables of activities not likely to cause doses exceeding 5 mSv (0.5 rem).

(2) The licensee shall provide the released individual with instructions, including written instructions, on actions recommended to maintain doses to other individuals as low as is reasonably achievable if the total effective dose equivalent to any other individual is likely to exceed 1 mSv (0.1 rem). If the dose to a breast-feeding infant or child could exceed 1 mSv (0.1 rem) assuming there were no interruption of breast-feeding, the instructions shall also include:

(a) guidance on the interruption or discontinuation of breast-feeding, and

(b) information on the consequences of failure to follow the guidance.

(3) The licensee shall maintain a record of the basis for authorizing the release of an individual, for three years after the date of release, if the total effective dose equivalent is calculated by:

(a) using the retained activity rather than the activity administered,

(b) using an occupancy factor less than 0.25 at 1 meter,

(c) using the biological or effective half-life, or

(d) considering the shielding by tissue.

(4) The licensee shall maintain a record, for three years after the date of release, that instructions were provided to a breast-feeding woman if the radiation dose to the infant or child from continued breast-feeding could result in a total effective dose equivalent exceeding 5 mSv (0.5 rem).

R313-32-80. Technical Requirements that Apply to the Providers of Mobile Nuclear Medicine Service.

A licensee providing mobile nuclear medicine service shall:

(1) transport to each address of use only syringes or vials containing prepared radiopharmaceuticals or radiopharmaceuticals that are intended for reconstitution of radiopharmaceutical kits;

(2) bring into each address of use all radioactive material to be used and, before leaving, remove all unused radioactive material and all associated waste;

(3) secure or keep under constant surveillance and immediate control all radioactive material when in transit or at an address of use;

(4) check survey instruments and dose calibrators as described in R313-32-50 and R313-32-51 and check all other transported equipment for proper function before medical use at each address of use;

(5) carry a radiation detection survey meter in each vehicle that is being used to transport radioactive material, and, before leaving a client address of use, survey all radiopharmaceutical areas of use with a radiation detection survey meter to ensure that all radiopharmaceuticals and all associated waste have been removed; and

(6) retain a record of each survey required in R313-32-80(5) for three years. The record shall include the date of the survey, a plan of each area that was surveyed, the measured dose rate at several points in each area of use expressed in microsieverts or millirems per hour, the instrument used to make the survey, and the initials of the individual who performed the survey.

R313-32-90. Storage of Volatiles and Gases.

A licensee shall store volatile radiopharmaceuticals and radioactive gases in the shipper's radiation shield and container. A licensee shall store a multi-dose container in a fume hood after drawing the first dosage from it.

R313-32-92. Decay-In-Storage.

(1) A licensee may hold radioactive material with a physical half-life of less than 65 days for decay-in-storage before disposal in ordinary trash and is exempt from the requirements of R313-15-1001 if it:

(a) holds radioactive material for decay a minimum of ten half-lives;

(b) monitors radioactive material at the container surface before disposal as ordinary trash and determines that its radioactivity cannot be distinguished from the background radiation level with a radiation detection survey meter set on its most sensitive scale and with no interposed shielding;

(c) removes or obliterates all radiation labels; and

(d) separates and monitors each generator column individually with radiation shielding removed to ensure that it has decayed to background radiation level before disposal.

(2) A licensee shall retain a record of each disposal permitted under R313-32-92(1) for three years. The record shall include the date of the disposal, the date on which the radioactive material was placed in storage, the radionuclides disposed, the survey instrument used, the background dose rate, the dose rate measured at the surface of each waste container, and the name of the individual who performed the disposal.

R313-32-100. Use of Unsealed Radioactive Material for Uptake, Dilution, and Excretion Studies.

A licensee may use for uptake, dilution, or excretion studies any unsealed radioactive material prepared for medical use that is either:

(1) obtained from a manufacturer or preparer licensed pursuant to R313-22-75(9) or equivalent requirements of the Nuclear Regulatory Commission or an Agreement State; or

(2) prepared by an authorized nuclear pharmacist, a physician who is an authorized user and who meets the requirements specified in R313-32-920, or an individual under the supervision of either as specified in R313-32-25.

R313-32-120. Possession of Survey Instrument.

A licensee authorized to use radioactive material for uptake, dilution, and excretion studies shall have in its possession a portable radiation detection survey instrument capable of detecting dose rates over the range one uSv (0.1 mrem) per hour to one mSv (100 mrem) per hour.

R313-32-200. Use of Unsealed Radioactive Material for Imaging and Localization Studies.

A licensee may use for imaging and localization studies any unsealed radioactive material prepared for medical use that is either:

(1) obtained from a manufacturer or preparer licensed pursuant to R313-22-75(9) or equivalent requirements of the Nuclear Regulatory Commission or an Agreement State; or

(2) prepared by an authorized nuclear pharmacist, a physician who is an authorized user and who meets the requirements specified in R313-32-920, or an individual under the supervision of either as specified in R313-32-25.

R313-32-204. Permissible Molybdenum-99 Concentration.

(1) A licensee shall not administer to humans a radiopharmaceutical containing more than 5.55 kBq (0.15 uCi) of molybdenum-99 per 37.0 MBq (one mCi) of technetium-99m.

(2) A licensee that uses molybdenum-99/technetium-99m generators for preparing a technetium-99m radiopharmaceutical shall measure the molybdenum-99 concentration in each elute or extract.

(3) A licensee that is required to measure molybdenum concentration shall retain a record of each measurement for three years. The record shall include, for each elution or extraction of technetium-99m, the measured activity of the technetium expressed in megabecquerels or millicuries, the measured activity of the molybdenum expressed in kilobecquerels or microcuries, the ratio of the measures expressed as kilobecquerels or microcuries of molybdenum per megabecquerels or millicuries of technetium, the time and date of the measurement, and the initials of the individual who made the measurement.

R313-32-205. Control of Aerosols and Gases.

(1) A licensee that administers radioactive aerosols or gases shall do so in a room with a system that will keep airborne concentrations within the limits prescribed in R313-15-201(4) and R313-15-301. The system shall either be directly vented to the atmosphere through an air exhaust or provide for collection and decay or disposal of the aerosol or gas in a shielded container.

(2) A licensee shall administer radioactive gases in rooms that are at negative pressure compared to surrounding rooms.

(3) Before receiving, using, or storing a radioactive gas, the licensee shall calculate the amount of time needed after a spill to reduce the concentration in the room to the occupational limit as specified in R313-15-201. The calculation shall be based on the highest activity of gas handled in a single container, the air volume of the room, and the measured available air exhaust rate.

(4) A licensee shall make a record of the calculations required in R313-32-205(3) that includes the assumptions, measurements, and calculations made and shall retain the record for the duration of use of the area. A licensee shall also post the calculated time and safety measures to be instituted in case of a spill at the area of use.

(5) A licensee shall check the operation of reusable collection systems each month, and measure the ventilation rates available in areas of radioactive gas use each six months.

Records of the measurement shall be kept for three years.

R313-32-220. Possession of Survey Instruments.

A licensee authorized to use radioactive material for imaging and localization studies shall have in its possession a portable radiation detection survey instrument capable of detecting dose rates over the range of one uSv (0.1 mrem) per hour to one mSv (100 mrem) per hour, and a portable radiation measurement survey instrument capable of measuring dose rates over the range ten uSv (one mrem) per hour to ten mSv (1000 mrem) per hour.

R313-32-300. Use of Unsealed Radioactive Material for Therapeutic Administration.

A licensee may use for therapeutic administration any unsealed radioactive material prepared for medical use that is either:

(1) obtained from a manufacturer or preparer licensed pursuant to R313-22-75(9) or equivalent requirements of the Nuclear Regulatory Commission or an Agreement State; or

(2) prepared by an authorized nuclear pharmacist, a physician who is an authorized user and who meets the requirements specified in R313-32-920, or an individual under the supervision of either as specified in R313-32-25.

R313-32-310. Safety Instruction.

(1) A licensee shall provide radiation safety instruction for all personnel caring for the patient or the human research subject receiving radiopharmaceutical therapy and hospitalized for compliance with R313-32-75. To satisfy this requirement, the instruction shall describe the licensee's procedures for:

(a) patient or human research subject control;

(b) visitor control;

(c) contamination control;

(d) waste control; and

(e) notification of the Radiation Safety Officer in case of the patient's or the human research subjects's death or medical emergency.

(2) A licensee shall keep for three years a list of individuals receiving instruction required by R313-32-310(1), a description of the instruction, the date of instruction, and the name of the individual who gave the instruction.

R313-32-315. Safety Precautions.

(1) For each patient or human research subject receiving radiopharmaceutical therapy and hospitalized for compliance with R313-32-75, a licensee shall:

(a) provide a private room with a private sanitary facility;

(b) post the patient's or the human research subject's door with a "Radioactive Materials" sign and note on the door or in the patient's or the human research subject's chart where and how long visitors may stay in the patient's or the human research subject's room;

(c) authorize visits by individuals under age 18 only on a case-by-case basis with the approval of the authorized user after consultation with the Radiation Safety Officer;

(d) promptly after administration of the dosage, measure the dose rates in contiguous restricted and unrestricted areas with a radiation measurement survey instrument to demonstrate compliance with the requirements of R313-15, and retain for three years a record of each survey that includes the time and date of the survey, a plan of the area or list of points surveyed, the measured dose rate at several points expressed in microsieverts or millirem per hour, the instrument used to make the survey, and the initials of the individual who made the survey;

(e) either monitor material and items removed from the patient's or the human research subject's room to determine that their radioactivity cannot be distinguished from the natural background radiation level with a radiation detection survey instrument set on its most sensitive scale and with no interposed shielding, or handle them as radioactive waste;

(f) survey the patient's or the human research subject's room and private sanitary facility for removable contamination with a radiation detection survey instrument before assigning another patient or human research subject to the room. The room shall not be reassigned until removable contamination is less than 200 disintegrations per minute per 100 square centimeters; and

(g) measure the thyroid burden of each individual who helped prepare or administer a dosage of iodine-131 within three days after administering the dosage, and retain for the period required by R313-15-1107 a record of each thyroid burden measurement, its date, the name of the individual whose thyroid burden was measured, and the initials of the individual who made the measurements.

(2) A licensee shall notify the Radiation Safety Officer immediately if the patient or the human research subject dies or has a medical emergency.

R313-32-320. Possession of Survey Instruments.

A licensee authorized to use radioactive material for radiopharmaceutical therapy shall have in its possession a portable radiation detection survey instrument capable of detecting dose rates over the range one uSv (0.1 mrem) per hour to one mSv (100 mrem) per hour, and a portable radiation measurement survey instrument capable of measuring dose rates over the range ten uSv (one mrem) per hour to ten mSv (1000 mrem) per hour.

R313-32-400. Use of Sources for Brachytherapy.

A licensee shall use the following sources in accordance with the manufacturer's radiation safety and handling instructions:

(1) Cesium-137 as a sealed source in needles and applicator cells for topical, interstitial, and intracavitary treatment of cancer;

(2) Cobalt-60 as a sealed source in needles and applicator cells for topical, interstitial, and intracavitary treatment of cancer;

(3) Gold-198 as a sealed source in seeds for interstitial treatment of cancer;

(4) Iridium-192 as seeds encased in nylon ribbon for interstitial and intracavitary treatment of cancer and as seeds for topical treatment of cancer;

(5) Strontium-90 as a sealed source in an applicator for treatment of superficial eye conditions;

(6) Iodine-125 as a sealed source in seeds for topical,

interstitial and intracavitary treatment of cancer;

(7) Palladium-103 as a sealed source in seeds for interstitial treatment of cancer.

R313-32-404. Release of Patients or Human Research Subjects Treated With Temporary Implants.

(1) Immediately after removing the last temporary implant source from a patient or a human research subject, the licensee shall make a radiation survey of the patient or the human research subject with a radiation detection survey instrument to confirm that all sources have been removed. The licensee shall not release from confinement for medical care a patient or a human research subject treated by temporary implant until all sources have been removed.

(2) A licensee shall retain a record of patient or human research subject surveys for three years. Each record shall include the date of the survey, the name of the patient or the human research subject, the dose rate from the patient or the human research subject expressed as microsieverts per hour or millirem per hour and measured at one meter from the patient or the human research subject, the survey instrument used, and the initials of the individual who made the survey.

R313-32-406. Brachytherapy Sources Inventory.

(1) Promptly after removing them from a patient or a human research subject, a licensee shall return brachytherapy sources to the storage area, and count the number returned to ensure that all sources taken from the storage area have been returned.

(2) A licensee shall make a record of brachytherapy source use which shall include:

(a) the names of the individuals permitted to handle the sources;

(b) the number and activity of sources removed from storage, the patient's or the human research subject's name and room number, the time and date they were removed from storage, the number and activity of the sources in storage after the removal, and the initials of the individual who removed the sources from storage; and

(c) the number and activity of sources returned to storage, the patient's or the human research subject's name and room number, the time and date they were returned to storage, the number and activity of sources in storage after the return, and the initials of the individual who returned the sources to storage.

(3) Immediately after implanting sources in a patient or a human research subject the licensee shall make a radiation survey of the patient or the human research subject and the area of use to confirm that no sources have been misplaced. The licensee shall make a record of each survey.

(4) A licensee shall retain the records required in R313-32-406(2) and (3) for three years.

R313-32-410. Safety Instruction.

(1) The licensee shall provide radiation safety instruction to all personnel caring for the patient or the human research subject undergoing implant therapy. To satisfy this requirement, the instruction shall describe:

(a) size and appearance of the brachytherapy sources;

(b) safe handling and shielding instructions in case of a dislodged source;

(c) procedures for patient or human research subject control;

(d) procedures for visitor control; and

(e) procedures for notification of the Radiation Safety Officer if the patient or the human research subject dies or has a medical emergency.

(2) A licensee shall retain for three years a record of individuals receiving instruction required by R313-32-410(1), a description of the instruction, the date of instruction, and the name of the individual who gave the instruction.

R313-32-415. Safety Precautions.

(1) For each patient or human research subject receiving implant therapy and not released from licensee control pursuant to R313-32-75, a licensee shall:

(a) not quarter the patient or the human research subject in the same room with an individual who is not receiving radiation therapy;

(b) post the patient's or human research subject's door with a "Radioactive Materials" sign and note on the door or in the patient's or human research subject's chart where and how long visitors may stay in the patient's or human research subject's room;

(c) authorize visits by individuals under age 18 only on a case-by-case basis with the approval of the authorized user after consultation with the Radiation Safety Officer;

(d) promptly after implanting the material, survey the dose rates in contiguous restricted and unrestricted areas with a radiation measurement survey instrument to demonstrate compliance with the requirements of R313-15, and retain for three years a record of each survey that includes the time and date of the survey, a plan of the area or list of points surveyed, the measured dose rate at several points expressed in microsieverts or millirem per hour, the instrument used to make the survey, and the initials of the individual who made the survey; and

(e) provide the patient or the human research subject with radiation safety guidance that will help to keep radiation dose to household members and the public as low as reasonably achievable before releasing the individual if the individual was administered a permanent implant.

(2) A licensee shall notify the Radiation Safety Officer immediately if the patient or the human research subject dies or has a medical emergency.

R313-32-420. Possession of Survey Instrument.

A licensee authorized to use radioactive material for implant therapy shall have in its possession a portable radiation detection survey instrument capable of detecting dose rates over the range one uSv (0.1 mrem) per hour to one mSv (100 mrem) per hour, and a portable radiation measurement survey instrument capable of measuring dose rates over the range ten uSv (one mrem) per hour to ten mSv (1000 mrem) per hour.

R313-32-500. Use of Sealed Sources for Diagnosis.

A licensee shall use the following sealed sources in accordance with the manufacturer's radiation safety and handling instructions:

(1) iodine-125, americium-241, or gadolinium-153 as a sealed source in a device for bone mineral analysis; and

(2) iodine-125 as a sealed source in a portable imaging device.

R313-32-520. Availability of Survey Instrument.

A licensee authorized to use radioactive material as a sealed source for diagnostic purposes shall have available for use a portable radiation detection survey instrument capable of detecting dose rates over the range one uSv (0.1 mrem) per hour to one mSv per hour to (100 mrem) per hour or a portable radiation measurement survey instrument capable of measuring dose rates over the range ten uSv (one mrem) per hour to ten mSv (1000 mrem) per hour. The instrument shall be calibrated in accordance with R313-32-51.

R313-32-600. Use of a Sealed Source in a Teletherapy Unit.

The rules and provisions of R313-32-600 through R313-32-647 govern the use of teletherapy units for medical use that contain a sealed source of cobalt-60 or cesium-137.

R313-32-605. Maintenance and Repair Restrictions.

Only a person specifically licensed by the Executive Secretary, the Nuclear Regulatory Commission, or an Agreement State to perform teletherapy unit maintenance and repair shall:

(1) install, relocate, or remove a teletherapy sealed source or a teletherapy unit that contains a sealed source; or

(2) maintain, adjust, or repair the source drawer, the shutter or other mechanism of a teletherapy unit that could expose the source, reduce the shielding around the source, or result in increased radiation levels.

R313-32-606. License Amendments.

In addition to the changes specified in R313-32-13, a licensee shall apply for and shall receive a license amendment before:

(1) making any change in the treatment room shielding;

(2) making any change in the location of the teletherapy unit within the treatment room;

(3) using the teletherapy unit in a manner that could result in increased radiation levels in areas outside the teletherapy treatment room;

(4) relocating the teletherapy unit; or

(5) allowing an individual not listed on the licensee's license to perform the duties of the teletherapy physicist.

R313-32-610. Safety Instruction.

(1) A licensee shall post instructions at the teletherapy unit console. To satisfy this requirement, these instructions shall inform the operator of:

(a) the procedure to be followed to ensure that only the patient or the human research subject is in the treatment room before turning the primary beam of radiation on to begin a treatment or after a door interlock interruption; and

(b) the procedure to be followed if:

(i) the operator is unable to turn the primary beam of radiation off with controls outside the treatment room or any other abnormal operation occurs; and

(ii) the names and telephone numbers of the authorized users and Radiation Safety Officer to be immediately contacted if the teletherapy unit or console operates abnormally.

(2) A licensee shall provide instruction in the topics identified in R313-32-610(1) to individuals who operate a teletherapy unit.

(3) A licensee shall retain for three years a record of individuals receiving instruction required by R313-32-610(2), a description of the instruction, the date of instruction, and the name of the individual who gave the instruction.

R313-32-615. Safety Precautions.

(1) A licensee shall control access to the teletherapy room by a door at each entrance.

(2) A licensee shall equip each entrance to the teletherapy room with an electrical interlock system that will:

(a) prevent the operator from turning the primary beam of radiation on unless each treatment room entrance door is closed;

(b) turn the primary beam of radiation off immediately when an entrance door is opened; and

(c) prevent the primary beam of radiation from being turned on following an interlock interruption until all treatment room entrance doors are closed and the beam on-off control is reset at the console.

(3) A licensee shall equip each entrance to the teletherapy room with a beam condition indicator light.

(4) A licensee shall install in each teletherapy room a permanent radiation monitor capable of continuously monitoring beam status.

(a) A radiation monitor shall provide visible notice of a teletherapy unit malfunction that results in an exposed or partially exposed source, and shall be observable by an individual entering the teletherapy room.

(b) A radiation monitor shall be equipped with a backup power supply separate from the power supply to the teletherapy unit. This backup power supply may be a battery system.

(c) A radiation monitor shall be checked with a dedicated check source for proper operation each day before the teletherapy unit is used for treatment of patients or human research subjects.

(d) A licensee shall maintain a record of the check required by R313-32-615(4)(c) for three years. The record shall include the date of the check, notation that the monitor indicates when its detector is and is not exposed, and the initials of the individual who performed the check.

(e) If a radiation monitor is inoperable, the licensee shall require individuals entering the teletherapy room to use a survey instrument or audible alarm personal dosimeter to monitor for malfunction of the source exposure mechanism that may result in an exposed or partially exposed source. The instrument or dosimeter shall be checked with a dedicated check source for proper operation at the beginning of each day of use. The licensee shall keep a record as described in R313-32-615(4)(d).

(f) A licensee shall promptly repair or replace the radiation monitor if it is inoperable.

(5) A licensee shall construct or equip each teletherapy room to permit continuous observation of the patient or the human research subject from the teletherapy unit console during irradiation.

R313-32-620. Possession of Survey Instrument.

A licensee authorized to use radioactive material in a teletherapy unit shall have in its possession either a portable radiation detection survey instrument capable of detecting dose rates over the range one uSv (0.1 mrem) per hour to one mSv (100 mrem) per hour or a portable radiation measurement survey instrument capable of measuring dose rates over the range ten uSv (one mrem) per hour to ten mSv (1000 mrem) per hour.

R313-32-630. Dosimetry Equipment.

(1) A licensee shall have a calibrated dosimetry system available for use. To satisfy this requirement, one of the following two conditions shall be met:

(a) The system shall be calibrated by the National Institute of Standards and Technology or by a calibration laboratory accredited by the American Association of Physicists in Medicine (AAPM). The calibration shall have been performed within the previous two years and after any servicing that may have affected system calibration.

(b) The system shall have been calibrated within the previous four years; eighteen to thirty months after that calibration, the system shall have been intercompared at an intercomparison meeting with another dosimetry system that was calibrated within the past twenty-four months by the National Bureau of Standards or by a calibration laboratory accredited by the AAPM. The intercomparison meeting shall be sanctioned by a calibration laboratory or radiologic physics center accredited by the AAPM. The results of the intercomparison meeting shall have indicated that the calibration factor of the licensee's system had not changed by more than two percent. The licensee shall not use the intercomparison result to change the calibration factor. When intercomparing dosimetry systems to be used for calibrating cobalt-60 teletherapy units, the licensee shall use a teletherapy unit with a cobalt-60 source. When intercomparing dosimetry systems to be used for calibrating cesium-137 teletherapy units, the licensee shall use a teletherapy unit with a cesium-137 source.

(2) The licensee shall have available for use a dosimetry system for spot-check measurements. To satisfy this requirement, the system may be compared with a system that has been calibrated in accordance with R313-32-630(1). This comparison shall have been performed within the previous year and after each servicing that may have affected system calibration. The spot-check system may be the same system used to meet the requirement in R313-32-630(1).

(3) The licensee shall retain a record of each calibration, intercomparison, and comparison for the duration of the license. For each calibration, intercomparison, or comparison, the record shall include the date, the model numbers and serial numbers of the instruments that were calibrated, intercompared, or compared as required by R313-32-630(1) and (2), the correction factor that was determined from the calibration or comparison or the apparent correction factor that was determined from an intercomparison, the names of the individuals who performed the calibration, intercomparison, or comparison, and evidence that the intercomparison meeting was sanctioned by a calibration laboratory or radiologic physics center accredited by AAPM.

R313-32-632. Full Calibration Measurements.

(1) A licensee authorized to use a teletherapy unit for medical use shall perform full calibration measurements on each teletherapy unit:

(a) before the first medical use of the unit; and

(b) before medical use under the following conditions:

(i) whenever spot-check measurements indicate that the output differs by more than five percent from the output obtained at the last full calibration corrected mathematically for radioactive decay;

(ii) following replacement of the source or following reinstallation of the teletherapy unit in a new location; or

(iii) following any repair of the teletherapy unit that includes removal of the source or major repair of the components associated with the source exposure assembly; and

(c) at intervals not exceeding one year.

(2) To satisfy the requirement of R313-32-632(1), full calibration measurements shall include determination of:

(a) the output within plus or minus three percent for the range of field sizes and for the distance or range of distances used for medical use;

(b) the coincidence of the radiation field and the field indicated by the light beam localizing device;

(c) the uniformity of the radiation field and its dependence on the orientation of the useful beam;

(d) timer constancy and linearity over the range of use;

(e) on-off error; and

(f) the accuracy of all distance measuring and localization devices in medical use.

(3) A licensee shall use the dosimetry system described in R313-32-630(1) to measure the output for one set of exposure conditions. The remaining radiation measurements required in R313-32-632(2)(a) may be made using a dosimetry system that indicates relative dose rates.

(4) A licensee shall make full calibration measurements required by R313-32-632(1) in accordance with either the procedures recommended by the Scientific Committee on Radiation Dosimetry of the American Association of Physicists in Medicine that are described in Physics in Medicine and Biology Vol. 16, No. 3, 1971, pp. 379-396, or by Task Group 21 of the Radiation Therapy Committee of the American Association of Physicists in Medicine that are described in Medical Physics Vol. 10, No. 6, 1983, pp. 741-711, and Vol. 11, No. 2, 1984, p. 213.

(5) A licensee shall correct mathematically the outputs determined in R313-32-632(2)(a) for physical decay for intervals not exceeding one month for cobalt-60 or six months for cesium-137.

(6) Full calibration measurement required in R313-32-632(1) and physical decay corrections required by R313-32-632(5) shall be performed by the licensee teletherapy physicist.

(7) A licensee shall retain a record of each calibration for the duration of the teletherapy unit source. The record shall include the date of the calibration, the manufacturer's name, model number, and serial number for both the teletherapy unit and the source, the model numbers and serial numbers of the instruments used to calibrate the teletherapy unit, tables that describe the output of the unit over the range of field sizes and for the range of distances used in radiation therapy, a

determination of the coincidence of the radiation field and the field indicated by the light beam localizing device, an assessment of timer linearity and constancy, the calculated on-off error, the estimated accuracy of each distance measuring or localization device, and the signature of the teletherapy physicist.

R313-32-634. Periodic Spot-Checks.

(1) A licensee authorized to use teletherapy units for medical use shall perform output spot-checks on each teletherapy unit once in each calendar month that include determination of:

(a) timer constancy, and timer linearity over the range of use;

(b) on-off error;

(c) the coincidence of the radiation field and the field indicated by the light beam localizing device;

(d) the accuracy of all distance measuring and localization devices used for medical use;

(e) the output for one typical set of operating conditions measured with the dosimetry system described in R313-32-630(2); and

(f) the difference between the measurement made in R313-32-634(2)(e) and the anticipated output, expressed as a percentage of the anticipated output (the value obtained at last full calibration corrected mathematically for physical decay).

(2) A licensee shall perform measurements required by R313-32-634(1) in accordance with procedures established by the teletherapy physicist. That individual need not actually perform the spot-check measurements.

(3) A licensee shall have the teletherapy physicist review the results of each spot-check within 15 days. The teletherapy physicist shall promptly notify the licensee in writing of the results of each spot-check. The licensee shall keep a copy of each written notification for three years.

(4) A licensee authorized to use a teletherapy unit for medical use shall perform safety spot-checks for each teletherapy facility once in each calendar month that assure proper operation of:

(a) electrical interlocks at each teletherapy room entrance;

(b) electrical or mechanical stops installed for the purpose of limiting use of the primary beam of radiation (restriction of source housing angulation or elevation, carriage or stand travel and operation of the beam on-off mechanism);

(c) beam condition indicator lights on the teletherapy unit, on the control console, and in the facility;

(d) viewing systems;

(e) treatment room doors from inside and outside the treatment room; and

(f) electrically assisted treatment room doors with the teletherapy unit electrical power turned off.

(5) A licensee shall arrange for prompt repair of any system identified in R313-32-634(4) that is not operating properly, and shall not use the teletherapy unit following door interlock malfunction until the interlock system has been repaired.

(6) A licensee shall retain a record of each spot-check required by R313-32-634(1) and (4) for three years. The record shall include the date of the spot-check, the manufacturer's name, model number, and serial number for both the teletherapy unit and source, the manufacturer's name, model number and serial number of the instrument used to measure the output of the teletherapy unit, an assessment of linearity and constancy, the calculated on-off error, a determination of the coincidence of the radiation field and the field indicated by the light beam localizing device, the calculated on-off error, the determined accuracy of each distance measuring or localization device, the difference between the anticipated output and the measured output, notations indicating the operability of each entrance door electrical interlock, each electrical or mechanical stop, each beam condition indicator light, the viewing system and doors, and the signature of the individual who performed the periodic spot-check.

R313-32-636. Safety Checks for Teletherapy Facilities.

(1) A licensee shall promptly check all systems listed in R313-32-634(4) for proper function after each installation of a teletherapy source and after making any change for which an amendment is required by R313-32-606(1) through (4).

(2) If the results of the checks required in R313-32-636(1) indicate the malfunction of a system specified in R313-32-634(4), the licensee shall lock the control console in the off position and not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(3) A licensee shall retain for three years a record of the facility checks following installation of a source. The record shall include notations indicating the operability of each entrance door interlock, each electrical or mechanical stop, each beam condition indicator light, the viewing system, and doors, and the signature of the Radiation Safety Officer.

R313-32-641. Radiation Surveys for Teletherapy Facilities.

(1) Before medical use, after each installation of a teletherapy source, and after making any change for which an amendment is required by R313-32-606(1) through (4), the licensee shall perform radiation surveys with a portable radiation measurement survey instrument calibrated in accordance with R313-32-51 to verify that:

(a) the maximum and average dose rates at one meter from the teletherapy source with the source in the off position and the collimators set for a normal treatment field do not exceed 100 uSv (ten mrem) per hour and 20 uSv (two mrem) per hour, respectively;

(b) with the teletherapy source in the on position with the largest clinically available treatment field and with a scattering phantom in the primary beam of the radiation, that:

(i) radiation dose quantities per unit time in restricted areas are not likely to cause personnel exposures in excess of the limits specified in R313-15-201; and

(ii) radiation dose quantities per unit time in unrestricted areas do not exceed the limits specified in R313-15-301.

(2) If the results of the surveys required in R313-32-641(1) indicate any radiation dose quantity per unit time in excess of the respective limit specified in R313-32-641(1), the licensee shall lock the control in the off position and not use the unit:

(a) except as may be necessary to repair, replace, or test the teletherapy unit shielding or the treatment room shielding;

or

(b) until the licensee has received a specific exemption pursuant to R313-12-54.

(3) A licensee shall retain a record of the radiation measurements made following installation of a source for the duration of the license. The record shall include the date of the measurements, the reason the survey is required, the manufacturer's name, model number and serial number of the teletherapy unit, the source, the instrument used to measure radiation levels, each dose rate measured around the teletherapy source while in the off position and the average of all measurements, a plan of the areas surrounding the treatment room that were surveyed, the measured dose rate at several points in each area expressed in microseverts or millirem per hour, the calculated maximum quantity of radiation over a period of one week for each restricted and unrestricted area, and the signature of the Radiation Safety Officer.

R313-32-643. Modification of Teletherapy Unit or Room Before Beginning a Treatment Program.

(1) If the survey required by R313-32-641 indicates that an individual in an unrestricted area may be exposed to levels of radiation greater than those permitted by R313-15-301, before beginning the treatment program the licensee shall:

(a) either equip the unit with stops or add additional radiation shielding to ensure compliance with R313-15-301(3);

(b) perform the survey required by R313-32-641 again; and

(c) include in the report required by R313-32-645 the results of the initial survey, a description of the modification made to comply with R313-32-643(1)(a), and the results of the second survey.

(2) As an alternative to the requirements set out in R313-32-643(1), a licensee may request a license amendment under R313-15-301(3) that authorizes radiation levels in unrestricted areas greater than those permitted by R313-15-301(1). A licensee shall not begin the treatment program until the license amendment has been issued.

R313-32-645. Reports of Teletherapy Surveys, Checks, Tests and Measurements.

A licensee shall mail a copy of the records required in R313-32-636, R313-32-641, R313-32-643, and the output from the teletherapy source expressed as coulombs/kilogram (roentgens) or gray (rad) per hour at one meter from the source and determined during the full calibration required in R313-32-632 to the Executive Secretary within thirty days following completion of the action that initiated the record requirement.

R313-32-647. Five-Year Inspection.

(1) A licensee shall have each teletherapy unit fully inspected and serviced during teletherapy source replacement or at intervals not to exceed five years, whichever comes first, to assure proper functioning of the source exposure mechanism.

(2) This inspection and servicing shall only be performed by persons specifically licensed to do so by the Executive Secretary, the Nuclear Regulatory Commission, or an Agreement State.

(3) A licensee shall keep a record of the inspection and servicing for the duration of the license. The record shall contain the inspector's name, the inspector's license number, the date of inspection, the manufacturer's name and model number and serial number for both the teletherapy unit and source, a list of components inspected, a list of components serviced and the type of service, a list of components replaced, and the signature of the inspector.

R313-32-900. Radiation Safety Officer.

Except as provided in R313-32-901, the licensee shall require an individual fulfilling the responsibilities of the Radiation Safety Officer as provided in R313-32-21 to be an individual who:

(1) is certified by:

(a) American Board of Health Physics in comprehensive health physics;

(b) American Board of Radiology;

(c) American Board of Nuclear Medicine;

(d) American Board of Science in nuclear medicine;

(e) Board of Pharmaceutical Specialties in nuclear pharmacy;

(f) American Board of Medical Physics in radiation oncology physics;

(g) Royal College of Physicians and Surgeons of Canada in nuclear medicine;

(h) American Osteopathic Board of Radiology; or

(i) American Osteopathic Board of Nuclear Medicine; or

(2) has had classroom and laboratory training and experience as follows:

(a) 200 hours of classroom and laboratory training that includes:

(i) radiation physics and instrumentation;

(ii) radiation protection;

(iii) mathematics pertaining to the use and measurement of radioactivity;

(iv) radiation biology; and

(v) radiopharmaceutical chemistry; and

(b) one year of full time experience as a radiation safety technologist at a medical institution under the supervision of the individual identified as the Radiation Safety Officer on a license issued by the Executive Secretary, Nuclear Regulatory Commission or Agreement State license that authorizes the medical use of radioactive material; or

(3) be an authorized user identified on the licensee's license.

R313-32-901. Training for Experienced Radiation Safety Officer.

An individual identified as a Radiation Safety Officer on a license issued by the Executive Secretary, Nuclear Regulatory Commission or Agreement State before January 1, 1989, need not comply with the training requirements of R313-32-900.

R313-32-910. Training for Uptake, Dilution, and Excretion Studies.

Except as provided in R313-32-970 and R313-32-971, the licensee shall require the authorized user of a radiopharmaceutical in R313-32-100(1) to be a physician who:

(1) is certified in:

(a) nuclear medicine by the American Board of Nuclear Medicine;

(b) diagnostic radiology by the American Board of Radiology;

(c) diagnostic radiology or radiology by the American Osteopathic Board of Radiology;

(d) nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or

(e) American Osteopathic Board of Nuclear Medicine in nuclear medicine; or

(2) has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of prepared radiopharmaceuticals, and supervised clinical experience as follows:

(a) 40 hours of classroom and laboratory training that includes:

(i) radiation physics and instrumentation;

(ii) radiation protection;

(iii) mathematics pertaining to the use and measurement of radioactivity;

(iv) radiation biology; and

(v) radiopharmaceutical chemistry; and

(b) 20 hours of supervised clinical experience under the supervision of an authorized user and that includes:

(i) examining patients or human research subjects and reviewing their case histories to determine their suitability for radioisotope diagnosis, limitations, or contraindications;

(ii) selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;

(iii) administering dosages to patients or human research subjects and using syringe radiation shields;

(iv) collaborating with the authorized user in the interpretation of radionuclide test results; and

(v) patient or human research subject follow-up; or

(3) has successfully completed a six-month training program in nuclear medicine as part of a training program that has been approved by the Accreditation Council for Graduate Medical Education and that included classroom and laboratory training, work experience, and supervised clinical experience in the topics identified in R313-32-910(2).

R313-32-920. Training for Imaging and Localization Studies.

Except as provided in R313-32-970 or R313-32-971, the licensee shall require the authorized user of a radiopharmaceutical, generator, or reagent kit in R313-32-200(1) to be a physician who:

(1) is certified in:

(a) nuclear medicine by the American Board of Nuclear Medicine;

(b) diagnostic radiology by the American Board of Radiology;

(c) diagnostic radiology or radiology by the American Osteopathic Board of Radiology;

(d) nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or

(e) American Osteopathic Board of Nuclear Medicine in nuclear medicine; or

(2) has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of prepared radiopharmaceuticals, generators, and reagent kits, supervised work experience, and supervised clinical experience as follows:

(a) 200 hours of classroom and laboratory training that includes:

(i) radiation physics and instrumentation;

(ii) radiation protection;

(iii) mathematics pertaining to the use and measurement of radioactivity;

(iv) radiopharmaceutical chemistry; and

(v) radiation biology; and

(b) 500 hours of supervised work experience under the supervision of an authorized user that includes:

(i) ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(ii) calibrating dose calibrators and diagnostic instruments and performing checks for proper operation of survey meters;

(iii) calculating and safely preparing patient or human research subject dosages;

(iv) using administrative controls to prevent the misadministration of radioactive material;

(v) using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

(vi) eluting technetium-99m from generator systems, measuring and testing the elute for molybdenum-99 and alumina contamination, and processing the elute with reagent kits to prepare technetium-99m labeled radiopharmaceuticals; and

(c) 500 hours of supervised clinical experience under the supervision of the authorized user that includes:

(i) examining patients or human research subjects and reviewing their case histories to determine their suitability for radioisotope diagnosis, limitations, or contraindications;

(ii) selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;

(iii) administering dosages to patients or human research subjects and using syringe radiation shields;

(iv) collaborating with the authorized user in the interpretation of radioisotope test results; and

(v) patient or human research subject follow-up; or

(3) has successfully completed a six-month training program in nuclear medicine that has been approved by the Accreditation Council for Graduate Medical Education and that included classroom and laboratory training, work experience, and supervised clinical experience in the topics identified in R313-32-920(2).

R313-32-930. Training for Therapeutic Use of Unsealed Radioactive Material.

Except as provided in R313-32-970, the licensee shall require the authorized user of radiopharmaceuticals in R313-32-300 to be a physician who:

(1) is certified by:

(a) the American Board of Nuclear Medicine;

(b) the American Board of Radiology in radiology, therapeutic radiology, or radiation oncology;

(c) nuclear medicine by the Royal College; or

(d) the American Osteopathic Board of Radiology after 1984; or

(2) has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of therapeutic radiopharmaceuticals, and supervised clinical experience as follows:

(a) 80 hours of classroom and laboratory training that includes:

(i) radiation physics and instrumentation;

(ii) radiation protection;

(iii) mathematics pertaining to the use and measurement of radioactivity; and

(iv) radiation biology; and

(b) supervised clinical experience under the supervision of an authorized user at a medical institution that includes:

(i) use of iodine-131 for diagnosis of thyroid function and the treatment of hyperthyroidism or cardiac dysfunction in ten individuals; and

(ii) use of iodine-131 for treatment of thyroid carcinoma in three individuals.

R313-32-932. Training for Treatment of Hyperthyroidism.

Except as provided in R313-32-970, the licensee shall require the authorized user of only iodine-131 for the treatment of hyperthyroidism to be a physician with special experience in thyroid disease who has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of iodine-131 for treating hyperthyroidism, and supervised clinical experience as follows:

(1) 80 hours of classroom and laboratory training that includes:

(a) radiation physics and instrumentation;

(b) radiation protection;

(c) mathematics pertaining to the use and measurement of radioactivity; and

(d) radiation biology; and

(2) Supervised clinical experience under the supervision of an authorized user that includes the use of iodine-131 for diagnosis of thyroid function, and the treatment of hyperthyroidism in ten individuals.

R313-32-934. Training for Treatment of Thyroid Carcinoma.

Except as provided in R313-32-970, the licensee shall require the authorized user of only iodine-131 for the treatment of thyroid carcinoma to be a physician with special experience in thyroid disease who has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of iodine-131 for treating thyroid carcinoma, and supervised clinical experience as follows:

(1) 80 hours of classroom and laboratory training that includes:

(a) radiation physics and instrumentation;

(b) radiation protection;

(c) mathematics pertaining to the use and measurement of radioactivity; and

(d) radiation biology; and

(2) Supervised clinical experience under the supervision of an authorized user that includes the use of iodine-131 for the treatment of thyroid carcinoma in three individuals.

R313-32-940. Training for Use of Brachytherapy Sources.

Except as provided in R313-32-970 the licensee shall require the authorized user of a brachytherapy source listed in R313-32-400 for therapy to be a physician who:

(1) is certified in:

(a) radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;

(b) radiation oncology by the American Osteopathic Board of Radiology;

(c) radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or

(d) therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or

(2) is in the active practice of therapeutic radiology, has had classroom and laboratory training in radioisotope handling techniques applicable to the therapeutic use of brachytherapy sources, supervised work experience, and supervised clinical experience as follows:

(a) 200 hours of classroom and laboratory training that includes:

(i) radiation physics and instrumentation;

(ii) radiation protection;

(iii) mathematics pertaining to the use and measurement of radioactivity; and

(iv) radiation biology;

(b) 500 hours of supervised work experience under the supervision of an authorized user at a medical institution that includes:

(i) ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(ii) checking survey meters for proper operation;

(iii) preparing, implanting, and removing sealed sources;

(iv) maintaining running inventories of material on hand;

(v) using administrative controls to prevent the misadministration of radioactive material; and

(vi) using emergency procedures to control radioactive material; and

(c) three years of supervised clinical experience that includes one year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association, and an additional two years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution that includes:

(i) examining individuals and reviewing their case histories to determine their suitability for brachytherapy treatment, and any limitations or contraindications;

(ii) selecting the proper brachytherapy sources and dose and method of administration;

(iii) calculating the dose; and

(iv) post-administration follow-up and review of case histories in collaboration with the authorized user.

R313-32-941. Training for Ophthalmic Use of Strontium-90.

Except as provided in R313-32-970, the licensee shall require the authorized user of only strontium-90 for ophthalmic radiotherapy to be a physician who is in the active practice of

therapeutic radiology or ophthalmology, and has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of strontium-90 for ophthalmic radiotherapy, and a period of supervised clinical training in ophthalmic radiotherapy as follows:

(1) 24 hours of classroom and laboratory training that includes:

(a) radiation physics and instrumentation;

(b) radiation protection;

(c) mathematics pertaining to the use and measurement of radioactivity; and

(d) radiation biology.

(2) Supervised clinical training in ophthalmic radiotherapy under the supervision of an authorized user at a medical institution that includes the use of strontium-90 for the ophthalmic treatment of five individuals that includes:

(a) examination of each individual to be treated;

(b) calculation of the dose to be administered;

(c) administration of the dose; and

(d) follow-up and review of each individual's case history.

R313-32-950. Training for Use of Sealed Sources for Diagnosis.

Except as provided in R313-32-970, the licensee shall require the authorized user of a sealed source in a device listed in R313-32-500 to be a physician, dentist, or podiatrist who:

(1) is certified in

(a) radiology, diagnostic radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;

(b) nuclear medicine by the American Board of Nuclear Medicine;

(c) diagnostic radiology or radiology by the American Osteopathic Board of Radiology; or

(d) nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or

(2) has had eight hours of classroom and laboratory training in basic radioisotope handling techniques specifically applicable to the use of the device that includes:

(a) radiation physics, mathematics pertaining to the use and measurement of radioactivity, and instrumentation;

(b) radiation biology;

(c) radiation protection; and

(d) training in the use of the device for the uses requested.

R313-32-960. Training for Teletherapy.

Except as provided in R313-32-970, the licensee shall require the authorized user of a sealed source listed in R313-32-600 in a teletherapy unit to be a physician who:

(1) is certified in:

(a) radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;

(b) radiation oncology by the American Osteopathic Board of Radiology;

(c) radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or

(d) therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or

(2) is in the active practice of therapeutic radiology, and has had classroom and laboratory training in basic radioisotope techniques applicable to the use of a sealed source in a teletherapy unit, supervised work experience, and supervised clinical experience as follows:

(a) 200 hours of classroom and laboratory training that includes:

(i) radiation physics and instrumentation;

(ii) radiation protection;

(iii) mathematics pertaining to the use and measurement of radioactivity; and

(iv) radiation biology;

(b) 500 hours of supervised work experience under the supervision of an authorized user at a medical institution that includes:

(i) review of the full calibration measurements and periodic spot checks;

(ii) preparing treatment plans and calculating treatment times;

(iii) using administrative controls to prevent misadministrations;

(iv) implementing emergency procedures to be followed in the event of the abnormal operation of a teletherapy unit or console; and

(v) checking and using survey meters; and

(c) three years of supervised clinical experience that includes one year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association and an additional two years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution that includes:

(i) examining individuals and reviewing their case histories to determine their suitability for teletherapy treatment, and any limitations or contraindications;

(ii) selecting the proper dose and how it is to be administered;

(iii) calculating the teletherapy doses and collaborating with the authorized user in the review of patients' or human research subjects' progress and consideration of the need to modify originally prescribed doses as warranted by patients' or human research subjects' reaction to radiation; and

(iv) post-administration follow-up and review of case histories.

R313-32-961. Training for Teletherapy Physicist.

The licensee shall require the teletherapy physicist to be an individual who:

(1) is certified by the American Board of Radiology in:

(a) therapeutic radiological physics;

(b) roentgen ray and gamma ray physics;

(c) x-ray and radium physics; or

(d) radiological physics; or

(2) is certified by the American Board of Medical Physics in radiation oncology physics; or

(3) holds a master's or doctor's degree in physics, biophysics, radiological physics, or health physics, and has completed one year of full time training in therapeutic radiological physics and an additional year of full time work

experience under the supervision of a teletherapy physicist at a medical institution that includes the tasks listed in R313-32-59, R313-32-632, R313-32-634 and R313-32-641.

R313-32-970. Training for Experienced Authorized Users.

Physicians, dentists, or podiatrists identified as authorized users for the medical, dental, or podiatric use of radioactive material on a license issued by the Executive Secretary, Nuclear Regulatory Commission, or Agreement State license issued before January 1, 1989, who perform only those methods of use for which they were authorized on that date need not comply with the training requirements of R313-32-900 to R313-32-961.

R313-32-971. Physician Training in a Three Month Program.

A physician who, before October 1, 1988, began a three month nuclear medicine training program approved by the Accreditation Council for Graduate Medical Education and has successfully completed the program need not comply with the requirements of R313-32-910 or R313-32-920.

R313-32-972. Recentness of Training.

The training and experience specified in R313-32-900 through R313-32-981 shall have been obtained within the seven years preceding the date of application or the individual shall have had related continuing education and experience since the required training and experience was completed.

R313-32-980. Training for an Authorized Nuclear Pharmacist.

The licensee shall require the authorized nuclear pharmacist to be a pharmacist who:

(1) has current board certification as a nuclear pharmacist by the Board of Pharmaceutical Specialties, or

(2)(a) has completed 700 hours in a structured educational program consisting of both:

(i) didactic training in the following areas:

(A) radiation physics and instrumentation;

(B) radiation protection;

(C) mathematics pertaining to the use and measurement of radioactivity;

(D) chemistry of radioactive material for medical use; and

(E) radiation biology; and

(ii) supervised experience in a nuclear pharmacy involving the following:

(A) shipping, receiving, and performing related radiation surveys;

(B) using and performing checks for proper operation of dose calibrators, survey meters, and, if appropriate, instruments used to measure alpha- or beta-emitting radionuclides;

(C) calculating, assaying, and safely preparing dosages for patients or human research subjects;

(D) using administrative controls to avoid mistakes in the administration of radioactive material;

(E) using procedures to prevent or minimize contamination and using proper decontamination procedures; and

(b) has obtained written certification, signed by a preceptor authorized nuclear pharmacist, that the above training has been satisfactorily completed and that the individual has achieved a level of competency sufficient to independently operate a nuclear pharmacy.

R313-32-981. Training for Experienced Nuclear Pharmacists.

A licensee may apply for and must receive a license amendment identifying an experienced nuclear pharmacist as an authorized nuclear pharmacist before it allows this individual to work as an authorized nuclear pharmacist. A pharmacist who has completed a structured educational program as specified in R313-32-980(2)(a) before January 1, 1998 and who is working in a nuclear pharmacy would qualify as an experienced nuclear pharmacist. An experienced nuclear pharmacist need not comply with the requirements on preceptor statement (See R313-32-980(2)(b)) and recentness of training (See R313-32-972) to qualify as an authorized nuclear pharmacist.

R313-32-999. Resolution of Conflicting Requirements During Transition Period.

If the rules in R313-32 conflict with the licensee's radiation safety program as identified in its license, and if that license was approved by the Bureau of Radiation Control, Department of Health, before January 1, 1989, and has not been renewed since January 1, 1989, then the requirements in the license will apply. However, if the licensee exercises its privilege to make minor changes in its radiation safety procedures that are not potentially important to safety under R313-32-31, the portion changed shall comply with the requirements of R313-32. At the time of license renewal and thereafter, these amendments to R313-32 shall apply.

KEY: radioactive material, radiopharmaceutical, brachytherapy, nuclear medicine
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R315. Environmental Quality, Solid and Hazardous Waste.
R315-301. Solid Waste Authority, Definitions, and General Requirements.
R315-301-1. Authority and Purpose.

The Solid Waste Permitting and Management Rules are promulgated under the authority of the Solid and Hazardous Waste Act, Chapter 6 of Title 19, to protect human health, to prevent land, air and water pollution, and to conserve the state's natural, economic and energy resources by setting minimum performance standards for the proper management of solid wastes originating from residences, commercial, agricultural, and other sources.

R315-301-2. Definitions.

Terms used in Rules R315-301 through R315-320 are defined in Sections 19-1-103 and 19-6-102. In addition, for the purpose of these rules, the following definitions apply.

(1) "Active area" means that portion of a facility where solid waste recycling, reuse, treatment, storage, or disposal operations are being conducted.

(2) "Airport" means a public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(3) "Aquifer" means a geological formation, group of formations, or portion of a formation that contains sufficiently saturated permeable material to yield useable quantities of ground water to wells or springs.

(4) "Areas susceptible to mass movement" means those areas of influence, characterized as having an active or substantial possibility of mass movement, where the movement of earth material at, beneath, or adjacent to the landfill unit, because of natural or human-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock falls.

(5) "Asbestos Waste" means friable asbestos, which is any material containing more than 1% asbestos as determined using the method specified in Appendix A, 40 CFR Part 763.1, 1991 ed., which is adopted and incorporated by reference, that when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

(6) "Background concentration" means the concentration of a contaminant in ground water upgradient or a lateral hydraulically equivalent point from a facility, practice, or activity, and which has not been affected by that facility, practice, or activity.

(7) "Class I landfill" means a municipal landfill or a commercial landfill solely under contract with a local government taking municipal waste generated within the boundaries of the local government and receiving, on a yearly average, over 20 tons of solid waste per day.

(8) "Class II landfill" means a municipal landfill or a commercial landfill solely under contract with a local government taking municipal waste generated within the boundaries of the local government and receiving, on a yearly average, 20 tons, or less, of solid waste per day.

(9) "Class III landfill" means a non-commercial landfill that is to receive only industrial solid waste, but excluding farms and ranches.

(10) "Class IV landfill" means a landfill that is to receive only construction/demolition waste, yard waste, inert waste, dead animals, or upon meeting the requirements of Section 26-32a-103.5 and Section R315-320-3, waste tires and materials derived from waste tires.

(11) "Class V landfill" means a commercial landfill which receives any nonhazardous solid waste for disposal. Class V landfill does not include a landfill that is solely under contract with a local government within the state to dispose of nonhazardous solid waste generated within the boundaries of the local government.

(12) "Closed facility" means any facility that no longer receives solid waste and has completed an approved closure plan, and any landfill on which an approved final cover has been installed.

(13) "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding household waste and industrial wastes.

(14) "Composite liner" means a liner system consisting of two components: the upper component consisting of a synthetic flexible membrane liner, and the lower component consisting of a layer of compacted soil. The composite liner must have the synthetic flexible membrane liner installed in direct and uniform contact with the compacted soil component and be constructed of specified materials and compaction to meet specified permeabilities.

(15) "Composting" means a method of solid waste management whereby the organic component of the waste stream is biologically decomposed under controlled conditions to a state in which the end product or compost can be safely handled, stored, or applied to the land without adversely affecting human health or the environment.

(16) "Construction/demolition waste" means waste from building materials, packaging, and rubble resulting from construction, remodeling, repair, and demolition operations on pavements, houses, commercial buildings, and other structures. Such waste may include: bricks, concrete, other masonry materials, soil, asphalt, rock, untreated lumber, rebar, and tree stumps. It does not include asbestos, contaminated soils or tanks resulting from remediation or clean-up at any release or spill, waste paints, solvents, sealers, adhesives, or similar hazardous or potentially hazardous materials.

(17) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water or soil which is a result of human activity.

(18) "Displaced or displacement" means the relative movement of any two sides of a fault measured in any direction.

(19) "Drop box facility" means a facility used for the placement of a large detachable container or drop box for the collection of solid waste for transport to a solid waste disposal facility. The facility includes the area adjacent to the containers for necessary entrance, exit, unloading, and turn-around areas. Drop box facilities normally serve the general public with uncompacted loads and receive waste from off-site. Drop box facilities do not include residential or commercial waste containers on the site of waste generation.

(20) "Energy recovery" means the recovery of energy in a

useable form from incineration, burning, or any other means of using the heat of combustion of solid waste that involves high temperature (above 1200 degrees Fahrenheit) processing.

(21) "Existing facility" means any facility that was receiving solid waste on or before July 15, 1993.

(22) "Expansion of a solid waste disposal facility" means any lateral or vertical expansion beyond or above the boundaries outlined in the initial permit application. Where no boundaries were designated in the disposal facility permit, expansion shall apply to all new land purchased or acquired after the effective date of these rules.

(23) "Facility" means all contiguous land, structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal operational units, e.g., one or more incinerators, landfills, container storage areas, or combinations of them.

(24) "Floodplain" means the land which has been or may be hereafter covered by flood water which has a 1% chance of occurring any given year. The flood is also referred to as the base flood or 100-year flood.

(25) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure or as determined by EPA test method 9095 (Paint Filter Liquids Test) as provided in EPA Report SW-846 "Test Methods for Evaluating Solid Waste" third edition, November 1986, as revised December 1987 which is adopted and incorporated by reference.

(26) "Garbage" means discarded animal and vegetable wastes and animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food, and of such a character and proportion as to be capable of attracting or providing food for vectors. Garbage does not include sewage and sewage sludge.

(27) "Ground water" means subsurface water which is in the zone of saturation including perched ground water.

(28) "Ground water quality standard" means a standard for maximum allowable contamination in ground water as set by Section R317-6-2.

(29) "Hazardous waste" means hazardous waste as defined by Subsection 19-6-102(7) and Section R315-2-3.

(30) "Holocene fault" means a fracture or zone of fractures along which rocks on one side of the fracture have been displaced with respect to those on the other side, which has occurred in the most recent epoch of the Quaternary period extending from the end of the Pleistocene, approximately 11,000 years ago, to the present.

(31) "Household size" means a container for a material or product that is normally and reasonably associated with households or household activities. The containers are of a size and design to hold materials or products generally for immediate use and not for storage, five gallons or less in size.

(32) "Household waste" means any solid waste, including garbage, trash, and sanitary waste in septic tanks, derived from households including single and multiple residences, hotels, motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas.

(33) "Incineration" means a controlled thermal process by which solid wastes are physically or chemically altered to gas, liquid, or solid residues which are also regulated solid wastes. Incineration does not include smelting operations where metals are reprocessed or the refining, processing, or the burning of used oil for energy recovery as described in Rule R315-15.

(34) "Industrial solid waste" means any solid waste generated by manufacturing or other industrial processes that is not a hazardous waste. Industrial solid waste includes waste resulting from the following manufacturing processes and associated activities: electric power generation; fertilizer or agricultural chemicals; food and related products or by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing or foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste; oil and gas waste; or other waste excluded by Subsection 19-6-102(16)(b).

(35) "Industrial solid waste facility" means a facility which receives only industrial solid waste from on-site or off-site sources for disposal.

(36) "Inert waste" means noncombustible, nonhazardous solid wastes that retain its physical and chemical structure under expected conditions of disposal, including resistance to biological or chemical attack.

(37) "Landfill" means a disposal facility where solid waste is placed in or on the land and which is not a landtreatment facility or surface impoundment.

(38) "Landtreatment, landfarming, or landspreading facility" means a facility or part of a facility where solid waste is applied onto or incorporated into the soil surface for the purpose of biodegradation.

(39) "Lateral expansion of a solid waste disposal facility" means any horizontal expansion of the waste boundaries of an existing landfill cell, module, or unit or expansions not consistent with past normal operating practices.

(40) "Lateral hydraulically equivalent point" means a point located hydraulically equal to a facility and in the same ground water with similar geochemistry such that the ground water, at that point, has not been affected by the facility.

(41) "Leachate" means a liquid that has passed through or emerged from solid waste and may contain soluble, suspended, miscible, or immiscible materials removed from such waste.

(42) "Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include human-made materials, such as fill, concrete and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

(43) "Lower explosive limit" means the lowest percentage by volume of a mixture of explosive gases which will propagate a flame in air at 25 degrees Celsius (77 degrees Fahrenheit) and atmospheric pressure.

(44) "Maximum horizontal acceleration in lithified earth material" means the maximum expected horizonal acceleration depicted on a seismic hazard map, with a 90% or greater probability that the acceleration will not be exceeded in 250

years, or the maximum expected horizontal acceleration based on site specific seismic risk assessment.

(45) "Municipal landfill" means a landfill that is not for profit and is either owned and operated by a local government or a government entity such as a city, town, county, service district, or an entity created by interlocal agreement of local governments, or is solely under contract with a local government or government entity. The landfill accepts, for disposal, the nonhazardous solid waste, including municipal solid waste, generated within the jurisdictional boundaries of the local government or government entity.

(46) "Municipal solid waste" means household waste, commercial solid waste, non-hazardous sludge, and exempt small quantity generator waste.

(47) "New facility" means any facility that begins receiving solid waste after July 15, 1993.

(48) "Off-site" means any site which is not on-site.

(49) "On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, provided that the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along the right-of-way. Property separated by a private right-of-way, which the site owner or operator controls, and to which the public does not have access, is also considered on-site property.

(50) "Operator" means the person, as defined by Subsection 19-1-103(4), responsible for the overall operation of a facility.

(51) "Owner" means the person, as defined by Subsection 19-1-103(4), who owns a facility or part of a facility.

(52) "PCB and PCBs" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of materials which contain such substances and is regulated under 40 CFR Part 761, 1995 ed.

(53) "Permeability" means the ease with which a porous material allows water and the solutes contained therein to flow through it. This is usually expressed in units of centimeters per second (cm/sec) and termed hydraulic conductivity. Soils and synthetic liners with a permeability for water of 1×10^{-7} cm/sec or less may be considered impermeable.

(54) "Permit" means the plan approval as required by Subsection 19-6-108(3)(a), or equivalent control document issued by the Executive Secretary to implement the requirements of the Utah Solid and Hazardous Waste Act.

(55) "Pile" means any noncontainerized accumulation of solid waste that is used for treatment or storage.

(56) "Poor foundation conditions" means those areas where features exist which indicate that a natural or human-induced event may result in inadequate foundation support for the structural components of a landfill unit.

(57) "Putrescible" means organic material subject to decomposition by microorganisms.

(58) "Qualified ground water scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training and experience in ground water hydrology and related fields as may be demonstrated by state registration, professional certification, or completion of accredited university programs that enable that individual to make sound professional judgements regarding ground water monitoring, contaminant fate and transport, and corrective action.

(59) "Recycling" means extracting valuable materials from the waste stream and transforming or remanufacturing them into useable materials that have a demonstrated or potential market.

(a) Recycling does not include processes that generate such volumes of material that no market exists for the material.

(b) Any part of the waste stream entering a recycling facility and subsequently returned to a waste stream or disposed has the same regulatory designation as the original waste.

(c) Recycling includes the substitution of nonhazardous solid waste fuels for conventional fuels (such as coal, natural gas, and petroleum products) for the purpose of generating the heat necessary to manufacture a product.

(60) "Recyclable materials" means those solid wastes that can be recovered from or otherwise diverted from the waste stream for the purpose of recycling, such as metals, paper, glass, and plastics.

(61) "Run-off" means any rainwater, leachate, or other liquid that has contacted solid waste and drains over land from any part of a facility.

(62) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto the active area of a facility.

(63) "Scavenging" means the uncontrolled removal of solid waste from a facility.

(64) "Seismic impact zone" means an area with a 10% or greater probability that the maximum horizonal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull, will exceed 0.10g in 250 years.

(65) "Septage" means a semisolid consisting of settled sewage solids combined with varying amounts of water and dissolved materials generated from septic tank systems.

(66) "Sharps" means any discarded or contaminated article or instrument from a health facility that may cause puncture or cuts. Such waste may include needles, syringes, blades, needles with attached tubing, pipettes, pasteurs, broken glass, and blood vials.

(67) "Sludge" means any solid, semisolid, or liquid waste, including grit and screenings generated from a:

(a) municipal, commercial, or industrial waste water treatment plant;

(b) water supply treatment plant;

(c) car wash facility;

(d) air pollution control facility; or

(e) any other such waste having similar characteristics.

(68) "Solid waste disposal facility" means a facility or part of a facility at which solid waste is received from on-site or off-site sources and intentionally placed into or on land and at which waste, if allowed by permit, may remain after closure. Solid waste disposal facilities include landfills, incinerators, and land treatment areas.

(69) "Solid waste incinerator facility" means a facility at which solid waste is received from on-site or off-site sources and is subjected to the incineration process. An incinerator facility that incinerates solid waste for any reason, including energy recovery, volume reduction, or to render it non-infectious, is a solid waste incinerator facility and is subject to the Utah Solid Waste Permitting and Management Rules.

(70) "Special waste" means discarded materials which may require special handling or may pose a threat to public safety, human health, or the environment. Special waste may include ash, automobile bodies, furniture and appliances, infectious waste, tires, dead animals, asbestos, industrial waste, wastes exempt from the hazardous waste classifications under the Federal Resource Conservation and Recovery Act, U.S.C., Section 6901, et seq., and sludge.

(71) "Structural components" means liners, leachate collection systems, final covers, run-on or run-off systems, and any other component used in the construction and operation of a landfill that is necessary for the protection of human health and the environment.

(72) "Surface impoundment or impoundment" means a facility or part of a facility which is a natural topographic depression, human-made excavation, or diked area formed primarily of earthen materials, although it may be lined with synthetic materials, which is designed to hold an accumulation of liquid waste or waste containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(73) "Transfer station" means a permanent, fixed, supplemental collection and transportation facility used by persons and route collection vehicles to deposit collected solid waste from off-site into a larger transfer vehicle for transport to a solid waste handling or disposal facility.

(74) "Transport vehicle" means a vehicle capable of hauling large amounts of solid waste such as a truck, packer, or trailer that may be used by refuse haulers to transport solid waste from the point of generation to a transfer station or a disposal facility.

(75) "Twenty-five year storm" means a 24-hour storm of such intensity that it has a 4% probability of being equalled or exceeded any given year. The storm could result in what is referred to as a 25-year flood.

(76) "Unit boundary" means a vertical surface located at the hydraulically downgradient limit of a landfill unit or other solid waste disposal facility unit which is required to monitor ground water. This vertical surface extends down into the ground water.

(77) "Unstable area" means a location that is susceptible to natural or human induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a facility. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terrains.

(78) "Vadose zone" means the zone of aeration including soil and capillary water. The zone is bound above by the land surface and below by the water table.

(79) "Vector" means a living animal including insect or other arthropod which is capable of transmitting an infectious disease from one organism to another.

(80) "Washout" means the carrying away of solid waste by waters of a base or 100-year flood.

(81) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(82) "Yard waste" means vegetative matter resulting from landscaping, land maintenance, and land clearing operations including grass clippings, prunings, and other discarded material generated from yards, gardens, parks, and similar types of facilities. Yard waste does not include garbage, paper, plastic, sludge, septage, or manure.

R315-301-3. Owner Responsibilities for Solid Waste.

The owner, operator or occupant of any premises or business establishment shall be responsible for the management and disposal of all solid waste generated or accumulated by the owner, operator, or occupant of the property in compliance with the Utah Solid Waste Permitting and Management Rules and the Utah Solid and Hazardous Waste Act.

R315-301-4. Prohibition of Illegal Disposal or Incineration of Solid Waste.

No person shall incinerate, burn, or dispose of any solid waste in any place except at a facility which is in compliance with the requirements of these and other applicable rules. This requirement does not include the deposition of inert waste used as fill material, mine tailings and overburden, and agricultural waste if the deposition or disposal does not cause a public nuisance or hazard or contribute to land, air or water pollution.

R315-301-5. Permit Required.

(1) No solid waste disposal facility shall be maintained, established, or expanded until the county, city, town, or other person operating or owning such facility has obtained a permit from the Executive Secretary.

(2) The on-site disposal of on-site generated nonhazardous solid waste from a single family farm or a single family ranch does not require a permit.

KEY: solid waste management, waste disposal

January 5, 1998 **19-6-105**
19-6-108
19-6-109
40 CFR 258

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-1. Utah Medicaid Program.

R414-1-1. Introduction and Authority.

(1) This rule generally characterizes the scope of the Medicaid Program in Utah, and defines all of the provisions necessary to administer the program.

(2) The rule is authorized by Title XIX of the Social Security Act, and Sections 26-1-5, 26-18-2.1, 26-18-2.3, UCA.

R414-1-2. Definitions.

The following definitions are used throughout the rules of the Division:

(1) "Act" means the federal Social Security Act.

(2) "Applicant" means any person who requests assistance under the medical programs available through the Division.

(3) "Categorically needy" means aged, blind or disabled individuals or families and children:

(a) who are otherwise eligible for Medicaid and who meet the financial eligibility requirements for AFDC, SSI, or an optional State supplement or are considered under section 1619(b) of the federal Social Security Act to be SSI recipients; or

(b) whose categorical eligibility is protected by statute.

(4) "Code of Federal Regulations" (CFR) means the publication by the Office of the Federal Register, specifically Title 42, used to govern the administration of the Medicaid Program.

(5) "Client" means a person the Division or its duly constituted agent has determined to be eligible for assistance under the Medicaid program.

(6) "Department" means the Department of Health.

(7) "Director" means the director of the Division.

(8) "Division" means the Division of Health Care Financing within the Department.

(9) "Emergency medical condition" means a medical condition showing acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:

(a) placing the patient's health in serious jeopardy;

(b) serious impairment to bodily functions;

(c) serious dysfunction of any bodily organ or part; or

(d) death.

(10) "Emergency service" means immediate medical attention and service performed to treat an emergency medical condition. Immediate medical attention is treatment rendered within 24 hours of the onset of symptoms or within 24 hours of diagnosis.

(11) "Emergency Services Only Program" means a health program designed to cover a specific range of emergency services.

(12) "Executive Director" means the executive director of the Department.

(13) "InterQual" means the InterQual Medical Review Criteria and System, a comprehensive, clinically based, patient focused medical review criteria and system developed by InterQual Inc.

(14) "Medicaid agency" means the Department of Health.

(15) "Medical assistance program" or "Medicaid program" means the state program for medical assistance for persons who are eligible under the state plan adopted pursuant to Title XIX of the federal Social Security Act; as implemented by Title 26, Chapter 18, UCA.

(16) "Medical or hospital assistance" means services furnished or payments made to or on behalf of recipients under medical programs available through the Division.

(17) "Medically needy" means aged, blind, or disabled individuals or families and children who are otherwise eligible for Medicaid, who are not categorically needy, and whose income and resources are within limits set under the Medicaid State Plan.

(18) "Provider" means any person, individual or corporation, institution or organization, qualified to perform services available under the Medicaid program and who has entered into a written contract with the Medicaid program.

(19) "Recipient" means a person who has received medical or hospital assistance under the Medicaid program.

(20) "Undocumented alien" means an alien who is not recognized by Immigration and Naturalization Services as being lawfully present in the United States.

R414-1-3. Single State Agency.

The Utah Department of Health is the Single State Agency designated to administer or supervise the administration of the Medicaid program under Title XIX of the federal Social Security Act.

R414-1-4. Medical Assistance Unit.

Within the Utah Department of Health, the Division of Health Care Financing has been designated as the medical assistance unit.

R414-1-5. State Plan.

As a condition for receipt of federal funds under title XIX of the Act, the Utah Department of Health must submit a State Plan contract to the federal government for the medical assistance program, and agree to administer the program in accordance with the provisions of the State Plan, the requirements of Titles XI and XIX of the Act, and all applicable federal regulations and other official issuances of the United States Department of Health and Human Services. A copy of the State Plan is available for public inspection at the Division's offices during regular business hours.

R414-1-6. Services Available.

(1) Medical or hospital services available under the Medical Assistance Program are generally limited by federal guidelines as set forth under Title XIX of the federal Social Security Act and Title 42 of the Code of Federal Regulations (CFR).

(2) The following services provided in the State Plan are available to both the categorically needy and medically needy:

(a) inpatient hospital services, with the exception of those services provided in an institution for mental diseases;

(b) outpatient hospital services and rural health clinic services;

(c) other laboratory and x-ray services;

(d) skilled nursing facility services, other than services in

an institution for mental diseases, for individuals 21 years of age or older;

(e) early and periodic screening and diagnoses of individuals under 21 years of age, and treatment of conditions found, are provided in accordance with federal requirements;

(f) family planning services and supplies for individuals of child-bearing age;

(g) physician's services, whether furnished in the office, the patient's home, a hospital, a skilled nursing facility, or elsewhere;

(h) podiatrist's services;

(i) optometrist's services;

(j) psychologist's services;

(k) interpreter's services;

(l) home health services:

(i) intermittent or part-time nursing services provided by a home health agency;

(ii) home health aide services by a home health agency; and

(iii) medical supplies, equipment, and appliances suitable for use in the home;

(m) private duty nursing services for children under age 21;

(n) clinic services;

(o) dental services;

(p) physical therapy and related services;

(q) services for individuals with speech, hearing, and language disorders furnished by or under the supervision of a speech pathologist or audiologist;

(r) prescribed drugs, dentures, and prosthetic devices and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist;

(s) other diagnostic, screening, preventive, and rehabilitative services other than those provided elsewhere in the State Plan;

(t) services for individuals age 65 or older in institutions for mental diseases:

(i) inpatient hospital services for individuals age 65 or older in institutions for mental diseases;

(ii) skilled nursing services for individuals age 65 or older in institutions for mental diseases; and

(iii) intermediate care facility services for individuals age 65 or older in institutions for mental diseases;

(u) intermediate care facility services, other than services in an institution for mental diseases. These services are for individuals determined, in accordance with section 1902(a)(31)(A) of the Social Security Act, to be in need of this care, including those services furnished in a public institution for the mentally retarded or for individuals with related conditions;

(v) inpatient psychiatric facility services for individuals under 22 years of age;

(w) nurse-midwife services;

(x) family or pediatric nurse practitioner services;

(y) hospice care in accordance with section 1905(o) of the Social Security Act;

(z) case management services in accordance with section 1905(a)(19) or section 1915(g) of the Social Security Act;

(aa) extended services to pregnant women, pregnancy-related services, postpartum services for 60 days, and additional services for any other medical conditions that may complicate pregnancy;

(bb) ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider in accordance with section 1920 of the Social Security Act; and

(cc) other medical care and other types of remedial care recognized under state law, specified by the Secretary of the United States Department of Health and Human Services, pursuant to 42 CFR 440.60 and 440.170, including:

(i) medical or remedial services provided by licensed practitioners, other than physician's services, within the scope of practice as defined by state law;

(ii) transportation services;

(iii) skilled nursing facility services for patients under 21 years of age;

(iv) emergency hospital services; and

(v) personal care services in the recipient's home, prescribed in a plan of treatment and provided by a qualified person, under the supervision of a registered nurse.

R414-1-7. Aliens.

(1) Certain qualified aliens described in Title IV of Public Law 104-193 may be eligible for the Medicaid program. All other aliens are prohibited from receiving non-emergency services, as described in Section 1903(v) of the Social Security Act, which is adopted and incorporated by reference.

(2) Aliens who are prohibited from receiving non-emergency services will have "Emergency Services Only Program" printed on their Medical Identification Cards, as noted in R414-3A.

R414-1-8. Statewide Basis.

The medical assistance program is state-administered and operates on a statewide basis in accordance with 42 CFR 431.50.

R414-1-9. Medical Care Advisory Committee.

There is a Medical Care Advisory Committee that advises the Medicaid agency director on health and medical care services. The committee is established in accordance with 42 CFR 431.12.

R414-1-10. Discrimination Prohibited.

In accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 70b), and the regulations at 45 CFR Parts 80 and 84, the Medicaid agency assures that no individual shall be subjected to discrimination under the plan on the grounds of race, color, gender, national origin, or handicap.

R414-1-11. Administrative Hearings.

The Medicaid agency has a system of administrative hearings for medical providers and dissatisfied applicants, clients, and recipients that meets all the requirements of 42 CFR Part 431, Subpart E.

R414-1-12. Utilization Review.

(1) In order to approve or deny payment of claims, the Medicaid agency shall use InterQual to determine medical necessity and appropriateness of services. The InterQual Medical Review Criteria and System, published by InterQual, Inc., January, 1997, is adopted and incorporated by reference.

(2) InterQual shall not apply to services that are:

(a) excluded as a Medicaid benefit by rule;

(b) provided in an intensive physical rehabilitation center as described in R414-2B; or

(c) organ transplant services as described in R414-10A. In these three exceptions, or where InterQual is silent, the Medicaid agency shall approve or deny claims based upon appropriate administrative rules or its own criteria as incorporated in provider contracts that incorporate the Medicaid Provider Manuals.

R414-1-13. Provider Agreements.

All requirements of 42 CFR 431.107 are met with respect to agreements between the Medicaid agency and each provider furnishing services under the plan.

R414-1-14. Utilization Control.

(1) The Medicaid agency has implemented a statewide program of surveillance and utilization control that safeguards against unnecessary or inappropriate use of Medicaid services available under the plan. The plan also safeguards against excess payments, and assesses the quality of services. The program meets the requirements of 42 CFR Part 456.

(2) In order to control utilization, and in accordance with 42 CFR 440.230(d), services, equipment, or supplies not specifically identified by the Department as covered services under the Medicaid program, are not a covered benefit.

R414-1-15. Medicaid Fraud.

The Medicaid agency has established and will maintain methods, criteria, and procedures that meet all requirements of 42 CFR 455.13 through 455.21 for prevention and control of program fraud and abuse.

R414-1-16. Confidentiality.

State statute, Title 63, Chapter 2, and Section 26-1-17.5, impose legal sanctions and provide safeguards that restrict the use or disclosure of information concerning applicants, clients, and recipients to purposes directly connected with the administration of the plan.

All other requirements of 42 CFR Part 431, Subpart F are met.

R414-1-17. Eligibility Determinations.

Determinations of eligibility for Medicaid under the plan are made by the Division of Health Care Financing and the Utah Department of Workforce Services. There is a written agreement between the Utah Department of Health and the Utah Department of Workforce Services. The agreement defines the relationships and respective responsibilities of the agencies.

R414-1-18. Professional Standards Review Organization.

All other provisions of the State Plan are administered by the Medicaid agency or its agents according to written contract, except for those functions for which final authority has been granted to a Professional Standards Review Organization under Title XI of the Act.

R414-1-19. Timeliness in Eligibility Determinations.

The Medicaid agency meets all timeliness requirements of 42 CFR Part 435, Subpart J, for processing applications, determining eligibility, and furnishing Medicaid.

R414-1-20. Residency.

Medicaid is furnished to eligible individuals who are residents of the State under 42 CFR 435.403.

R414-1-21. Out-of-state Services.

Medicaid services are available to eligible residents of the state who are temporarily in another state. Reimbursement for out-of-state services shall be provided in accordance with 42 CFR 431.52.

R414-1-22. Retroactive Coverage.

Individuals are entitled to Medicaid services under the plan during the three months preceding the month of application if they were, or would have been, eligible at that time.

R414-1-23. Freedom of Choice of Provider.

Unless an exception under 42 CFR 431.55 applies, any individual eligible under the plan may obtain Medicaid services from any institution, pharmacy, person, or organization that is qualified to perform the services and has entered into a Medicaid provider contract, including an organization that provides these services or arranges for their availability on a prepayment basis.

R414-1-24. Availability of Program Manuals and Policy Issuances.

In accordance with 42 CFR 431.18, the state office, local offices, and all district offices of the Department maintain program manuals and other policy issuances that affect recipients, providers, and the public. These offices also maintain the Medicaid agency's rules governing eligibility, need, amount of assistance, recipient rights and responsibilities, and services. These manuals, policy issuances, and rules are available for examination and, upon request, are available to individuals for review, study, or reproduction.

R414-1-25. General Rule Format.

The following format is used generally throughout the rules of the Division. Section headings as indicated and the following general definitions are for guidance only. The section headings are not part of the rule content itself. In certain instances, this format may not be appropriate and will not be implemented due to the nature of the subject matter of a specific rule.

(1) Introduction and Authority. A concise statement as to what Medicaid service is covered by the rule, and a listing of specific federal statutes and regulations and state statutes that authorize or require the rule.

(2) Definitions. Definitions that have special meaning to the particular rule.

(3) Client Eligibility. Categories of Medicaid clients

eligible for the service covered by the rule: Categorically Needy or Medically Needy or both. Conditions precedent to the client's obtaining coverage such as age limitations or otherwise.

(4) Program Access Requirements. Conditions precedent external to the client's obtaining service, such as type of certification needed from attending physician, whether available only in an inpatient setting or otherwise.

(5) Service Coverage. Detail of specific services available under the rule, including limitations, such as number of procedures in a given period of time or otherwise.

(6) Prior Authorization. As necessary, a description of the procedures for obtaining prior authorization for services available under the particular rule. However, prior authorization must not be used as a substitute for regulatory practice that should be in rule.

(7) Other Sections. As necessary under the particular rule, additional sections may be indicated. Other sections include regulatory language that does not fit into sections (1) through (5).

KEY: medicaid
November 13, 1997 26-1-5
Notice of Continuation May 1, 1997 26-18-1

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-4x. Policy Statement on Denial of Payment to Medicaid Provider When Client Fails to Keep Scheduled Appointment.
R414-4x-1.

This policy is developed in accordance with the Medicare Update Bulletin, January 1982 (82-01), and the Utah Medicaid Information Bulletin 83-20.

Reimbursement shall not be made to a provider for service not actually furnished to a client because the client failed to keep a scheduled appointment.

Billing for services not rendered is improper, and may constitute fraud. If a provider, physician or supplier of services does not render a specifically identifiable service to a client, there is no basis for submitting a bill for reimbursement for services rendered.

Further information can be found in the Medicaid Provider Manual Section III.

KEY: medicaid
1987 26-1-5
Notice of Continuation January 12, 1998

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-15. Residents Personal Needs Fund.
R414-15-1. Introduction and Authority.

(1) This policy ensures proper administration of the personal funds of a Medicaid client who is a resident in a long term care facility. The administrative payee is responsible for using the beneficiary's benefits in his best interest. Flat rate reimbursement shall not be charged to personal funds. The flat rate shall cover the services specified in Attachment 4.19-D, Section 400 of the State Plan.

(2) This rule is authorized by Section 26-1-5 and 42 CFR 442 and 447.

R414-15-2. Definitions.

The definitions in R414-1 apply to this rule.

R414-15-3. Facility Responsibilities.

(1) For residents who are Medicaid clients, the administration and management of a long term care facility (the facility) must provide the resident, next of kin, or legal guardian:

(a) a written statement at the time of admission explaining:

(i) the resident's rights regarding personal funds; and

(ii) a list of services included in the basic per diem rate;

(b) access to a written record of all financial transactions involving the individual resident funds;

(c) a written itemized statement quarterly of all financial transactions involving the individual resident funds upon written request; and

(d) all funds that were given to the facility for safekeeping, including interest, within 30 days of the resident's discharge.

(2) The facility must notify the Social Security Administration office to have a representative payee appointed for residents who do not have a legal guardian, representative payee, or other authorized individual to manage their personal needs funds.

(3) The facility must serve as a temporary representative payee for the resident until the representative payee is appointed.

(4) The facility must allow the resident to access his funds for at least one hour during business hours.

(5) Upon request, the facility must return funds to the resident from an outside interest-bearing account within one business day.

(6) The facility shall deposit all funds in excess of $50.00:

(a) within 15 calendar days of receipt of the money;

(b) in an interest-bearing account that clearly indicates that the facility's interest is only fiduciary; and

(c) in a federally insured savings institution.

(7) The facility may deposit the resident's Social Security check into the facility's bank account if the personal need portion of the resident's check is transferred to the resident's account on the same day.

(8) The facility must distribute monthly the interest from the resident's interest-bearing accounts by either:

(a) maintaining separate savings accounts for each resident; or

(b) prorating the amount individually if funds are combined in one account for all residents.

(9) The facility may keep up to $50.00 of the resident's money in a non-interest-bearing account that is readily accessible to the resident.

(10) The facility must give any benefits to the resident either personally or through the resident's personal need fund unless there is a written authorization from the resident or legal

guardian to do otherwise. This includes resident entitlements from Social Security Supplemental Income, government and private pensions, Veterans Administration, and other similar entitlement programs.

(11) The facility must provide the estate executor or administrator of a deceased resident with a written accounting of the resident's personal funds within 30 days of the resident's death. If the resident has not had an executor or administrator appointed, the facility must provide the accounting to:

(a) the resident's next of kin, legal guardian, representative payee, or other person the resident designated to manage his personal financial affairs while he was living; and

(b) the District Court in the county where the resident died.

(12) If the facility sells or leases the business, it must:

(a) provide the buyer or lessee with a written statement of all of the residents' monies and properties being transferred;

(b) obtain a signed receipt from the new owner or lessee before the sale or lease is final; and

(c) provide each resident's legal guardian, representative payee, or other person the resident authorized to manage his personal funds, a written accounting of all funds held by the facility before any transfer of ownership. The new owner or lessee shall assume full liability for all residents' personal needs accounts.

(13) For medical or supplemental security income recipients, the facility must provide written notification to the resident and the Department ten days before the resident's funds are about to exceed the amount that would jeopardize his Medicaid eligibility.

(14) The facility must maintain the resident's personal funds for safekeeping if requested according to R414-15-4.

R414-15-4. Resident Personal Funds for Safekeeping.

The resident shall not be required to give his personal funds to the facility for safekeeping. If the resident (or legal guardian) requests this service of the facility, the request must be a written authorization.

KEY: medicaid
January 13, 1998 26-1-5
Notice of Continuation November 13, 1997

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-22. Administrative Sanction Procedures and Regulations.
R414-22-1.

General Provisions

1. Introduction

From time to time administrative sanctions against Medicaid providers may be necessary when program benefits have been abused or improperly applied. These Administrative Sanction Procedures and Regulations have been established to provide the Division of Health Care Financing (DHCF) with the administrative procedures to ensure the most effective and efficient operation of the Medicaid program possible.

2. Authority

These regulations are issued pursuant to the authority granted DHCF by Utah Code Sections 26-1-5, 26-18-3(2) and (4) to implement the Medicaid program by such rules and regulations as are necessary for the proper and efficient operation of the State Plan for Medical Assistance.

3. Definitions

(a) "Abuse" means provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in reimbursement for services that are either not medically necessary or that fail to meet professionally recognized standards for health care.

(b) "Conviction" or "Convicted" means a criminal conviction entered by a Federal or State court for fraud involving Medicare or Medicaid regardless of whether an appeal from that judgment is pending.

(c) "Fiscal agent" means an organization which processes and pays provider claims on behalf of DHCF.

(d) "Fraud" means intentional deception or misrepresentation made by a person which results in some unauthorized Medicaid benefit to himself or some other person. It includes any act that constitutes fraud under applicable State law.

(e) "Offense" means any of the grounds for sanctioning set forth in Section 4, below.

(f) "Person" means any natural person, company, firm, association, corporation or other legal entity.

(g) "Practitioner" means a physician or other individual licensed under State law to practice his or her profession.

(h) "Provider" means an individual, firm, partnership, corporation, association or institution which provides, or has been approved to provide medical assistance to a recipient pursuant to the State Medicaid program.

(i) "Suspension" means that items or services furnished by a specified provider will not be reimbursed under Medicaid.

(j) "Termination from participation" means termination of the existing provider contract/agreement.

4. Grounds for Sanctioning Providers

Sanctions may be imposed by DHCF against a provider for any one or more of the following grounds:

(a) Knowingly presenting or causing to be presented to Medicaid any false or fraudulent claim, other than simple billing errors, for services or merchandise.

(b) Knowingly submitting or causing to be submitted false information for the purpose of obtaining greater Medicaid reimbursement than the provider is legally entitled to.

(c) Knowingly submitting or causing to be submitted for Medicaid reimbursement any claims on behalf of a provider who has been terminated or suspended from the Medicaid program, unless the claims for that provider were included for services or supplies provided prior to his suspension or termination from the Medicaid program. (See Section 6b(2).)

(d) Knowingly submitting or causing to be submitted false information for the purpose of meeting Medicaid prior authorization requirements.

(e) Failure to keep records that are necessary to substantiate services rendered to Medicaid recipients.

(f) Failure to disclose or make available to DHCF, its authorized agents, and/or the State Fraud Control Unit, records

or services provided to Medicaid recipients and/or records of payments made for those services.

(g) Failure to provide services to Medicaid recipients in accordance with accepted medical community standards as adjudged by either a body of peers or appropriate State regulatory agencies.

(h) Breach of the terms of the Medicaid provider agreement.

(i) Failure to comply with the terms of the provider certification on the Medicaid claim form.

(j) Over-utilizing the Medicaid program by inducing, furnishing, or otherwise causing a Medicaid recipient to receive service(s) or merchandise which is not medically necessary.

(k) Rebating or accepting a fee or portion of a fee or charge for a Medicaid recipient referral.

(l) Violating the Utah State Medical Assistance Act, UCA 26-18-2 et seq., or any regulation promulgated pursuant thereto.

(m) Knowingly submitting a false or fraudulent application for Medicaid provider status.

(n) Violations of any laws or regulations governing the conduct of health care occupations, professions or regulated industries.

(o) Conviction of a criminal offense relating to performance as a Medicaid provider.

(p) Negligent practice resulting in death or injury to patients as determined in a judicial proceeding.

(q) Failure to comply with standards required by State or Federal laws and regulations for continued participation in the Medicaid program. (For example, licensure.)

(r) Documented practice of charging Medicaid recipients for Medicaid covered services over and above amounts paid by DHCF unless there is a written agreement signed by the recipient that such charges will be paid by the recipient.

(s) Refusal to execute a new Medicaid provider agreement when doing so is necessary to ensure compliance with State or Federal law or regulations.

(t) Failure to correct any deficiencies listed in a Statement of Deficiencies and Plan of Correction, HCFA form 2567, in provider operations within a specific time frame agreed to by DHCF and the provider(s), or pursuant to a court or formal administrative hearing decision.

(u) Suspension or termination from participation in Medicare for failure to comply with the laws and regulation governing that program.

(v) Failure to obtain or maintain all licenses required by State or Federal law to legally provide Medicaid services.

(w) Failure to repay or make arrangements for the repayment of any identified Medicaid overpayments or otherwise erroneous payments as required by the State Plan, court order, or formal administrative hearing decision.

5. Sanctions

The following sanctions may be invoked against providers based on the grounds specified in subsection 4, above.

(a) Termination from participation in the Medicaid program;

(b) Suspension of participation in the Medicaid program;

6. Imposition and Extent of Sanction

(a) Imposition of Sanction

(1) Before a decision is made by DHCF whether to impose a sanction on a provider, the provider will be notified in writing of the findings of any investigation by DHCF, its agents, or the Bureau of Medicaid Fraud, and any possible sanctions that might be imposed. A provider will have 30 days following the date of the notice to respond in writing to the findings of any investigation. Additional time not to exceed 30 days may be granted by DHCF upon written request for cause shown.

(2) The decision as to the appropriate sanction to be imposed shall be at the discretion of DHCF after input has been received from the provider on the results of the investigation.

(3) The following factors shall be considered in determining what sanction, if any, should be imposed:

(a) Seriousness of offense(s);

(b) Extent of offense(s);

(c) History of prior violations of Medicaid or Medicare law;

(d) Prior imposition of sanctions by DHCF:

(e) Extent of prior notice, education, or warning supplied to the provider by DHCF pertaining to the offense(s) for which the provider is being considered for sanction;

(f) Adequacy of assurances by the provider that the provider will comply prospectively with Medicaid requirements related to the offense(s);

(g) Whether a lesser sanction will be sufficient to remedy the problem;

(h) Sanctions imposed by Licensing Boards or peer review groups and professional health care associations pertaining to the offenses.

(i) Suspension or termination from participation in another governmental medical program for failure to comply with the laws and regulations governing such programs.

(4) Where a provider has been convicted of defrauding the Medicaid program, or has been terminated or suspended from the Medicare program for abuse, DHCF must institute proceedings to terminate or suspend the provider from the Medicaid program (See Subsection 7 below).

(b) Scope of Sanction

(1) Suspension or termination from participation of any provider shall preclude such provider from submitting claims for payment, either personally or through claims submitted by any clinic, group, partnership, corporation or other similar organization, to DHCF or its fiscal agents for any services or supplies provided under the Medicaid program, except for those services or supplies provided prior to the suspension or termination.

(2) When the provisions of Subsection b(1) are violated by a provider of services which is a clinic, group, corporation or other similar organization, the DHCF may, in accordance with Section 4c, suspend or terminate such organization and/or any individual person within said organization who is responsible for such violation.

(c) Provider Notified of Sanction

If DHCF determines that a sanction should be imposed, the provider will be notified by letter from DHCF of the sanction at least 10 calendar days before the sanction becomes effective in accordance with the notice provisions of the Department of Health Administrative Hearing Procedures for Medicaid set forth in the Provider Manual in Volume I (Administration) Section E.

7. Mandatory Suspension or Termination From Medicaid

DHCF must suspend or terminate from Medicaid participation any medical practitioner or other health care professional licensed under State law who is convicted of Medicaid or Medicare related crime(s) in either a federal or state court.

When a practitioner or other health care professional is convicted and sentenced in a State court of Medicaid-related crime(s) DHCF will promptly notify the Department of Health and Human Services, Regional Sanctions Coordinator, and provide the following information within 15 days after sentencing:

(a) Name and address of the practitioner;

(b) Date of conviction;

(c) Statute(s) violated and number of counts;

(d) A copy of the indictment;

(e) A copy of the plea agreement (if applicable) and the judgment, conviction, or probation order;

(f) Current address of the practitioner (if the practitioner is incarcerated, provide the name and address of the penal institution); and

(g) Name and address of the Director of the State local licensing authority.

8. Waiver of Mandatory Suspension or Termination

(a) If mandatory suspension or termination of the practitioner is expected to have a substantial negative impact on the availability of medical care in a community or area, DHCF may request a waiver of mandatory suspension or termination by submitting to the Health Care Financing Administration a request for waiver which contains a brief statement outlining the problem.

(b) The Health Care Financing Administration will notify DHCF if and when it waives the suspension or termination in response to a request of DHCF. This should occur only if the Secretary of the Department of Health and Human Services has designated a health manpower shortage area, and an insufficient number of National Health Service Corps personnel have been assigned to meet the needs of that area.

9. Notice of Sanction

(a) When a provider has been sanctioned for a period exceeding 15 days pursuant to these Administrative Sanction Procedures and Regulations, the DHCF shall notify as appropriate the applicable professional society, Board of Registration or Licensure, and Federal or State agencies of the findings made and the sanctions imposed.

(b) DHCF will notify any appropriate Medicaid recipients, in a timely manner, that the provider has been suspended or terminated from the Medicaid program.

10. Provider Application

Any application for a Medicaid provider agreement which is submitted to DHCF will be fully evaluated with a review made of any sanction case files that may have existed in the past, before the provider agreement will be approved by DHCF.

KEY: medicaid

1987 26-1-5

Notice of Continuation January 13, 1998

R430. Health, Health Systems Improvement, Child Care Licensing.

R430-3. General Child Care Facility Rules Inspection and Enforcement.

R430-3-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 39.

R430-3-2. Purpose.

This rule delineates the role and responsibility of the Department in the enforcement of rules pertaining to health and safety in all child care facilities regulated by Title 26, Chapter 39. These provisions provide criteria to ensure that sanctions are applied consistently and appropriately.

R430-3-3. Statement of Findings.

(1) The Department may inspect each licensed facility at least once during each year to determine compliance with the applicable rules.

(2) If the Department has reason to believe that a child care facility is in violation of Title 26, Chapter 39, or any of the rules governing child care, the Department shall serve a written Statement of Findings to the licensee or his designee.

(a) All Statements for Class I and III violations shall be served within 24 hours.

(b) All Statements for Class II violations shall be served within ten working days.

(3) Violations shall be classified as Class I, Class II, and Class III violations.

(a) "Class I Violation" means any violation of a statute or rule relating to the operation or maintenance of a child care facility which presents imminent danger to children in the facility, or which presents a clear hazard to the public health.

(b) "Class II Violation" means any violation of a statute or rule relating to the operation or maintenance of a child care facility which has a direct or immediate relationship to the health, safety, or security of children in a child care facility.

(c) "Class III Violation" means establishing, conducting, managing, or operating a child care facility regulated under Title 26, Chapter 39 and this rule without a license or with an invalid license.

(4) The Department may cite a facility with one or more violations.

(5) The Statement of Findings shall include:

(a) The statute or rule violated,

(b) a description of the violation,

(c) the facts which constitute the violation, and

(d) the classification of the violation.

R430-3-4. Plan of Correction.

(1) A child care facility shall, within 14 calendar days of the receipt of a Statement of Findings, submit a plan outlining the following:

(a) How the required corrections shall be accomplished.

(b) Who is the responsible person to monitor whether the correction is accomplished;

(c) The date by which the facility shall make the correction.

(2) Within ten working days of receipt of the Plan of Correction, the Department shall make a determination as to the acceptability of the plan of correction.

(3) If the Department rejects the Plan of Correction, the Department shall notify the facility of the reasons for rejection and may request a revised Plan of Correction or issue a Notice of Agency Action directing a Plan of Correction and imposing a deadline for the correction. The facility shall submit a revised plan of correction within 14 days of receipt of a request.

(4) If a facility corrects a violation before the deadline for submission and approval of a Plan of Correction, the facility shall submit a report of correction.

(5) If a facility seeks review of the statement of findings, it is not required to submit a plan of correction during the review period.

R430-3-5. Corrective Action Required for Class I Violations.

(1) If the Department issues a Class I violation to a licensed or unlicensed child care facility, the facility shall abate or eliminate the situation, condition, or practice constituting the Class I violation within a fixed period of time for the correction that is specified in the Plan of Correction.

(2) The Department shall conduct a follow-up inspection within 14 calendar days or within the agreed-upon correction period to determine correction of Class I violations.

R430-3-6. Corrective Action Required for Class II Violations.

(1) A facility served with a Statement of Findings citing a Class II violation shall correct the violation within the time specified in the Plan of Correction or within a time approved by the Department, but not to exceed 60 days from the issue date.

(2) The facility shall submit justification to the Department for corrections that take longer than 60 days, for consideration of approval by the Department.

(3) The Department may issue a conditional license or impose sanctions to the license or close the facility if a facility is cited with a Class II violation and fails to take required corrective action.

R430-3-7. Failure to Correct Class III Violations.

(1) If the Department serves a Statement of Findings for a Class III violation, the facility shall file a Request for Agency Action/License Application form within 14 days and pay the required licensing fee.

(a) If the facility fails to submit the request as specified, the Department shall order closure of the facility.

(b) If the Executive Director determines that the lives, health, or safety of the children cannot be adequately assured pending application and licensure or an adjudicative proceeding to determine whether a license is necessary, he may order immediate closure of the facility.

R430-3-8. Sanction Action on License.

(1) The Department may initiate an action against a child care facility pursuant to Section 26-39-108. That action may include:

(a) Denial or revocation of a license if the facility fails to comply with R430-100, exhibits evidence of aiding, abetting or permitting the commission of any illegal act, or demonstrates

conduct adverse to the public health, morals, welfare, and safety of the children under its care.

(b) Restriction or prohibition on new admissions to a child care facility for:

(i) violation of any provision under these rules; or

(ii) permitting, aiding, or abetting the commission of any illegal act in the child care facility.

(c) Distribution of a notice of public disclosure to at least one newspaper of general circulation or other media form stating the violation of licensure rules or illegal conduct permitted by the facility and the agency action taken.

(d) Placement of Department employees or agents as monitors in the facility until corrective action is completed.

(e) Assessment of the cost incurred by the Department in placing the monitors.

(f) Assessment of monetary penalties that must be paid by the facility.

R430-3-9. Immediate Closure of Facility.

(1) The Department may order the immediate closure of any licensed or unlicensed child care facility if the health or safety of the children is in immediate jeopardy during the course of adjudicative proceedings.

(2) If the Department orders immediate closure of a facility, it shall serve an order that the facility is ordered closed as of a given date.

(3) The Department may maintain an action in the name of the state for injunction or other process against the child care facility which disobeys a closure order.

(4) The Department may assist in relocating children to another licensed facility.

R430-3-10. Statutory Penalties.

A violation of this rule is punishable by administrative civil monetary penalty of up to $5,000 per day as provided in Utah Code Section 26-39-108 or other civil penalty of up to $5,000 per day or a class B misdemeanor on the first offense and a class A misdemeanor on the second offense as provided in Utah Code, Title 26, Chapter 23.

KEY: child care facilities
January 21, 1998 26-39

R430. Health, Health Systems Improvement, Child Care Licensing.
R430-6. Background Screening.
R430-6-1. Authority.

(1) The Utah Code, Section 26-39-107, requires that a Bureau of Criminal Identification, referred to as BCI, screening be conducted on each person requesting to be licensed or to renew a license for existing, new, and proposed owners, directors, members of the governing body, employees, providers of care and volunteers, except parents of children enrolled in the child care program.

(2) The Utah Code, Section 26-39-104, requires the Department to make and enforce rules to protect children's common needs for a safe and healthy environment and provide for competent care givers. The Department shall review the Unified Social Service Delivery System (USSDS) child and adult abuse data base to screen for individuals who may have committed acts of abuse, neglect or exploitation.

R430-6-2. Purpose.

The purpose of the screening process using the BCI criminal background and child and adult abuse data base is to protect children receiving services in a child day care program. The BCI screening process determines whether an individual has been convicted of any crime. In addition, the Department screens all individuals using the child abuse data base to determine if a covered individual has committed acts of abuse, neglect or exploitation.

R430-6-3. Definitions.

Terms used in this rule are defined in Title 26, Chapter 39. In addition:

(1) "Covered Individual" means all proposed employees of a child care facility, including owners, volunteers (excluding parents), existing employees, members of governing bodies, and, for family care settings, all individuals residing in the home where a child care programs is to be licensed, who are 18 years old and over.

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

R430-6-4. Bureau of Criminal Identification.

(1) The Utah Code, Section 26-39-107, requires that a BCI screening be conducted on covered individuals requesting to be licensed, to renew a license, or to be employed or volunteer in a licensed child care setting.

(a) Immediately upon or prior to employing or licensing a covered individual, the child care facility shall submit applicant information, fees and releases to the Department to allow the Department to perform a criminal background screening and child abuse screening.

(b) If a covered individual applicant has lived in Utah less that two years, or has unexplained gaps in work or residence record, the covered individual shall request a criminal background screening from the state or country of former residence. The covered individual shall submit the out-of-state criminal background screening within 90-days after application for review by the Department.

(c) If a covered individual has been serving a full-time religious mission out-of-state or has been in military service out-of-state for the immediate past two years, the covered individual shall submit to the Department a letter from their clergy or commanding officer documenting that the covered individual was not convicted of any felony or serious misdemeanor crimes during the time period of the religious or military service.

(2) If the BCI screening indicates that the covered individual has a criminal record that indicates there is a conviction for a felony or misdemeanor, the covered individual shall submit a fingerprint card, waiver and fee upon request by the Department. The Department shall submit them to the Department of Public Safety, Bureau of Criminal Investigations for additional screening.

(a) The fingerprint card that the covered individual submits shall be prepared either by the local law enforcement

agency or an agency approved by local law enforcement.

(b) The Department of Public Safety, Bureau of Criminal Investigations, shall report the background screening and forward the fingerprint card to the Department. The Department shall review the criminal convictions within the past five years to determine whether to approve the covered individual for licensing or employment.

(c) If based upon the BCI screening, the Department denies the covered individual a license, volunteer position or employment, the Department shall send a Notice of Agency Action to the child care provider or covered individual stating that the application is denied.

(3) The Department shall make the following determination if a covered individual has a criminal history record:

(a) If the covered individual was convicted of a felony, the covered individual may not provide child care, volunteer, or own or operate a child care program licensed by the Department.

(b) If the covered individual was convicted of a misdemeanor within the past five years, the covered individual may not provide child care, volunteer, or own or operate a child care program licensed by the Department, if the misdemeanor involves offenses identified in the Utah Criminal Code as offenses against the family, offenses against the person, pornography, prostitution, or any type of sexual offense.

(c) If the covered individual is a person with a felony or misdemeanor conviction who resides in a home where child care is provided, the Department shall not issue a license for day care in the home.

(4) The Executive Director may consider an approval for licensing or employment a covered individual who has been convicted of a misdemeanor but not a misdemeanor involving offenses identified in the Utah Criminal Code as offenses against the family, offenses against the person, pornography, prostitution, or any type of sexual offense, according to the following criteria:

(a) If the convictions were older than five years, the covered individual may provide child care and operate a child care program licensed by the Department.

(b) If the convictions were within the last five years, the Department shall make a comprehensive review of the individual circumstances. If the Department finds that the covered individual's conduct is not adverse to the public health, morals, welfare, and safety of children, the covered individual may provide child care and operate a child care program licensed by the Department.

(c) If the convictions demonstrate a pattern of behavior which indicates that the covered individual's conduct is adverse to the public health, morals, welfare, and safety of children, the covered individual may not provide child care and operate a child care program licensed by the Department.

(5) The Department shall rely on the BCI as conclusive evidence of the conviction and the Department may revoke or deny a license and employment based on that evidence.

(6) If the covered individual is denied a license or employment based upon the BCI and the covered individual disagrees with the BCI report, the covered individual may seek redress through the Utah Department of Public Safety, Bureau of Criminal Identification, as provided in Section 77-18-2.

(7) All covered individuals shall report all felony and misdemeanor convictions of covered individuals for offenses identified in the Utah Criminal Case as identified in the Utah Criminal Code as offenses against the family, offenses against the person, pornography, prostitution, or any type of sexual offense to the Department within 48 hours of conviction.

R430-6-5. Child Abuse Management Information System.

(1) Pursuant to Utah Code Subsection 26-39-104(1)(a)(ii) the Department shall screen all covered individuals for a history of substantiated abuse, neglect, or exploitation from the management information system maintained by the Utah Department of Human Services (DHS).

(2) If a covered individual appears on the data base, the Department may deny or revoke a license or employment.

(3) The Department shall review the date of the substantiated finding, type of substantiation, written documentation, and the legal status of the covered individual. If the Department determines there exists credible evidence that the covered individual poses a threat to the safety and health of children being served in licensed child care settings, the Department shall not grant or renew a license or employment

(4) If the Department denies or revokes a license or employment based upon the child or adult abuse management information system, the Department shall send a Notice of Agency Action to the licensee and the covered individual.

(5) If the covered individual disagrees with the record of substantiation of abuse, he must pursue an appeal with the Department of Human Services. If the covered individual agrees with the substantiated finding of abuse that was the basis of the Department's denial or revocation, the covered individual may request a hearing with the Department.

(a) Upon request, the Department may permit the covered individual to be employed under supervision until a decision is reached and if the applicant can demonstrate that the work arrangement does not pose a threat to the safety and health of children being served in the licensed child care setting.

(b) The Department may hold the license or employment denial in abeyance until DHS renders a decision, if a covered individual appeals the record of substantiation.

(6) If the Department of Human Services determines a covered individual has a substantiated finding of abuse, neglect or exploitation after the Department issues a license or grants employment, the licensee and covered individual has five working days to notify the Department. Failure to notify the Department may result in revocation of the license.

KEY: child care facilities
January 20, 1998 26-39

R430. Health, Health Systems Improvement, Child Care Licensing.
R430-30. Adjudicative Procedure.
R430-30-1. Purpose.

This rule is adopted pursuant to Title 26, Chapter 39.

R430-30-2. Definitions.

(1) "Department" means the Utah Department of Health, Bureau of Licensing.

(2) "Initial agency determination" means a decision by department staff, without conducting adjudicative proceedings, of the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all determinations to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license, all as limited by Subsection 63-46b-1(2).

(3) "Notice of agency action" means the formal notice meeting the requirements of Subsection 63-46b-(3)2 that the department issues to commence an adjudicative proceeding.

(4) "Request for agency action" means the formal written request meeting the requirements of Subsection 63-46b-3(3) that requests the department to commence an adjudicative proceeding.

R430-30-3. Commencement of Adjudicative Proceedings.

(1) All adjudicative proceedings under Title 26, Chapter 39, Utah Child Care Licensing Act, and under R430, Child Care Licensing Rules, are formal adjudicative proceedings.

(2) The Department may commence an adjudicative proceeding by filing and serving a notice of agency action in accordance with Subsection 63-46b-3(2) when the Department's actions are of a nature that require an adjudicative proceeding before the Department makes a decision.

(3) A person affected by an initial agency determination may commence an adjudicative proceeding and meet the requirements for a request for agency action under Subsection 63-46b-3(3) by completing the "Facility Licensure Request for Agency Action" form and filing the form with the Department.

R430-30-4. Responses.

(1) A respondent to a notice of agency action shall file and serve a written response within 30 calendar days of the postmarked mailing date or last publication date of the notice of agency action.

(2) A respondent who has filed a request for agency action, and has received notice from the presiding officer under Subsection 63-46b-3(3)(d)(iii) that further proceedings are required to determine the Department's response to the request, shall file and serve a written response within 30 calendar days of the postmarked mailing date or last publication date of the presiding officer's notice.

(3) The written response shall:

(a) include the information specified in Subsection 63-46b-6(1);

(b) be signed by the respondent or the respondent's representative; and

(c) be filed with the Department during the time period specified in Subsection R430-30-4(1) or R430-30-4(2).

(4) The respondent shall send one copy of the response by certified mail to each party.

(5) A person who has filed a request for agency action and has received notice from the presiding officer under Subsection 63-46b-3(3)(d)(ii) that the request is denied may request a hearing before the Department to challenge the denial. The person must complete and submit the Department hearing request form to the presiding officer within 30 calendar days of the postmarked mailing date of the presiding officer's notice.

(6) The presiding officer, upon motion of a party or upon the presiding officer's own motion, may allow any pleadings to be amended or corrected. Defects which do not affect substantial rights of the parties shall be disregarded.

R430-30-5. Discovery.

(1) Any party to a formal adjudicative proceeding may engage in discovery consistent with the provisions of this rule.

(2) The provisions of Rules 26, 27, 28, 29, 30, 32, 34, 36, and 37 of the Utah Rules of Civil Procedure, current January 1, 1995, are adopted and incorporated by reference.

(a) Where the incorporated Utah Rules of Civil Procedure refer to the court or to the clerk, the reference shall be to the presiding officer.

(b) Statutory restrictions on the release of information held by governmental entity shall be honored in controlling what is discoverable.

(c) All response times that are greater than 10 working days in the incorporated Utah Rules of Civil Procedure are amended to be 10 working days from the postmark of the mailing date of the request, unless otherwise ordered by the presiding officer.

(d) The parties shall ensure that all discovery is completed at least 10 calendar days before the day of the hearing. The parties may not make discovery requests to which the response time falls beyond 10 calendar days before the day of the hearing.

(e) Depositions may be recorded by audio recording equipment. However, any deposition to be introduced at the hearing must be first transcribed to a written document.

(f) Service of any discovery request or subpoena may be made upon any person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure. Service may be made by mail, by the party or by the party's agent.

(g) Subpoenas to compel the attendance of witnesses as provided in Rule 30(a) shall conform to Section R430-30-6.

R430-30-6. Witnesses and Subpoenas.

(1) Each party is responsible for the presence of that party's witnesses at the hearing.

(2) The presiding hearing officer may issue a subpoena to compel the attendance of a witness or the production of evidence, in accordance with the following:

(a) the officer may issue the subpoena upon a party's motion supported by affidavit showing sufficient need, or upon the officer's own motion;

(b) the party to whom the hearing officer has issued a subpoena shall cause the subpoena and a copy of the affidavit, if any, to be served.

(c) every subpoena shall be issued by the presiding officer under the seal of the Department, shall state the title of the action, and shall command every person to whom it is directed to attend and give testimony at time and place therein specified.

(d) a supporting affidavit for a subpoena duces tecum for the production by a witness of books, accounts, memoranda, correspondence, photographs, papers, documents, records, or other tangible thing shall include the following:

(i) the name and address of the entity upon whom the subpoena is to be served;

(ii) a description of what the party seeks to have the witness bring;

(iii) a showing of the materiality to the issue involved in the hearing;

(iv) a statement by the party that to the best of his knowledge the witness has such items in his possession or under his control.

R430-30-7. Certificate of Service.

There shall appear on all documents required to be served a certificate of service dated and signed by the party or his agent in substantially the following form:

I certify that I served the foregoing document upon all parties to this proceeding by delivering (or mailing postage prepaid and properly addressed, or causing to be delivered) a copy of it to (provide the name of the person).

R430-30-8. Stays and Temporary Remedy.

(1) During the pendency of judicial review, a party may petition for a stay of the order or other temporary remedy by filing a written petition with the presiding officer within seven calendar days of the day the order is issued.

(2) The presiding officer shall issue a written decision within ten working days of the filing date of the request. The presiding officer may grant a stay or other temporary remedy if such an action is in the best interest of the children.

(3) The request for a stay or temporary remedy shall be considered denied if the presiding officer does not issue a written decision within ten days of the filing of a written petition.

(4) The presiding officer may grant a stay or other temporary remedy on the presiding officer's own motion.

R430-30-9. Declaratory Orders.

Any person or agency may petition for a Department declaratory ruling on orders issued by the Department where there is statutory authority to issue orders by following the procedures outlined in Rule R380-5.

KEY: child care facilities
January 21, 1998 26-39

R432. Health, Health Systems Improvement, Health Facility Licensure.

R432-103. Specialty Hospital - Rehabilitation.

R432-103-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-103-2. Purpose.

The purpose of this rule is to promote the public health and welfare through the establishment and enforcement of program standards for the operation of rehabilitation hospitals.

R432-103-3. Compliance.

All facilities governed by this rule shall be in full compliance at the time of licensure.

R432-103-4. Definitions.

(1) Refer to Common Definitions in R432-1-3.

(2) Refer to definition of "specialty hospital", R432-101-4(2).

R432-103-5. Licensure.

License required. Refer to R432-2.

R432-103-6. General Construction Rules.

Refer to R432-9, Rehabilitation Construction Rule.

R432-103-7. Organization and Staff.

(1) The hospital shall be staffed, organized and operated to coordinate all offered services of the hospital.

(a) The responsibility for administrative direction shall be vested in a trained rehabilitation counselor or other licensed health care professional with experience or training acceptable to the governing board.

(b) A trained rehabilitation counselor or other professionally licensed staff member, as permitted by law and hospital policy, shall serve as the primary therapist.

(c) There shall be a multi-disciplinary team that includes a physician, registered nurse, and rehabilitation counselor that is responsible for program and treatment services.

(2) There shall be written policies and procedures approved by the board and reviewed annually that address at least the following:

(a) staff and their responsibilities;

(b) program services;

(c) patient assessment;

(d) treatment and discharge.

R432-103-8. Professional Staff.

(1) The rehabilitation services of the hospital shall be organized, staffed and supported according to the nature, scope and extent of the services provided.

(2) All staff must be licensed, registered or certified by the Utah Department of Commerce for their respective disciplines.

R432-103-9. Medical Staff.

The medical direction of the rehabilitation care and services of the hospital shall be the responsibility of a licensed physician who is a member of the medical staff and appointed by the governing body.

R432-103-10. Other Policies and Procedures.

For the following policies and procedures, R432-100 shall apply:

(1) The Governing Body, R432-100-4.

(2) Administrator, R432-100-5.

(3) Nursing, R432-100-8.

(4) For the following policies and procedures, R432-101 shall apply:

(a) Volunteers, R432-101-13(4).

(b) Quality Assurance, R432-101-14.

(c) Patient Rights, R432-101-18.

(d) Emergency and Disaster, R432-101-19.

(e) Admission and Discharge, R432-101-20.

(f) Transfer Agreements, R432-101-21.

(g) Pets In Hospitals, R432-101-22.

R432-103-11. Rehabilitation Services.

(1) Medical staff participation in the delivery of physical rehabilitation services shall be provided by a qualified physician member of the medical staff who is knowledgeable about rehabilitation medicine by reason of training and experience. Qualified, competent professional and support personnel shall be available to meet the objectives of the service and the needs of the patients.

(2) A qualified professional for physical rehabilitation services shall complete a functional assessment and evaluation.

(a) A treatment plan shall be developed based on an evaluation that includes an assessment of functional ability appropriate to the patient.

(b) Measurable goals, which are described in functional or behavioral terms, shall be established for the patient and include time frames for achievement.

(c) The patient's progress and the results of treatment shall be assessed at least monthly for outpatients and at least every two weeks for inpatients.

(d) The patient's progress and response to treatment shall be documented in the medical record.

R432-103-12. Occupational Therapy.

Occupational therapy services shall include the following:

(1) the assessment and treatment of occupational performance, including:

(a) independent living skills,

(b) prevocational or work skills,

(c) educational skills,

(d) leisure abilities, and

(e) social skills;

(2) the assessment and treatment of performance components, including:

(a) neuromuscular,

(b) sensori-integrative,

(c) cognitive, and

(d) psychosocial skills;

(3) therapeutic interventions, adaptations, and prevention; and

(4) individualized evaluations of past and current performance, based on observations of individual or group tasks, standardized tests, record review, interviews, and/or activity histories.

(5) Occupational therapy services staff shall document and monitor the extent to which goals are met relative to assessing and increasing the patient's functional abilities in daily living and relative to preventing further disability.

R432-103-13. Physical Therapy.

Refer to R432-100-28.

R432-103-14. Clinical Services.

Where the following services are used, R432-100 shall apply:

(1) Ambulatory Surgery, R432-100-13.
(2) Special Care Unit, R432-100-14.
(3) Surgery Services, R432-100-21.
(4) Outpatient Services, R432-100-18.
(5) Pediatric Clinical Services, R432-100-19.
(6) Inpatient Hospice, R432-100-23.

R432-103-15. Ancillary Services.

The following services, if provided, shall comply with R432-100 as follows:

(1) Central supply, R432-100-32.
(2) Dietary, R432-100-33.
(3) Laundry, R432-100-34.
(4) Maintenance Services, R432-100-37.
(5) Housekeeping Services, R432-100-38.

R432-103-16. Emergency Services.

(1) Each specialty hospital shall have the ability to provide emergency first aid treatment to patients, staff, visitors, and to persons who may be unaware of or unable to immediately reach services in other facilities (an equivalent of the Joint Commission's Level IV emergency service).

(2) Provisions shall include a treatment room, storage for supplies and equipment, provisions for reception and control of patients, convenient patient toilet room, and communication hookup and access to a poison control center.

(3) Any additional or expanded emergency services offered must comply with the provisions of the appropriate sections of R432-100-15.

(4) Provision for protocols for contacting local emergency medical services.

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R432. Health, Health Systems Improvement, Health Facility Licensure.
R432-151. Mental Disease Facility.
R432-151-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-151-2. Purpose.

The purpose of the rule is to establish program standards for a mental disease facility (MDF) that is engaged primarily in providing diagnosis, treatment or care of persons with mental disease, including medical attention, nursing care and related services.

R432-151-3. General Provisions.

(1) R432-150 also applies to a Mental Disease Facility.

(2) The Department shall consider the following to determine whether a facility is an MDF:

(a) The facility specializes in providing psychiatric care and treatment, with emphasis on active treatment programs which focus on mental disease.

(b) Fifty per cent or more of the residents in the facility have a diagnosis of mental disease (using the ICD-9-CM codes) excluding the following:

(i) 290 through 294.9 and 310 through 310.9 for senility or organic brain syndrome;

(ii) 317 through 319 for mental retardation;

(iii) 314 through 315.9 for individuals suffering impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons; and

(iv) 309 and 316 for Adjustment Reaction or Psychic factors associated with disease classified elsewhere.

(3) A facility that is determined to be an MDF according to this rule must be licensed as a mental disease facility.

(4) When a facility census identifies 40 per cent or more of the resident population with a mental disease diagnosis, the Department may request the facility to submit a completed Utah Level of Care Survey (ULOCS).

R432-151-4. Definitions.

(1) See common definitions in rule R432-1-3.

(2) Special definitions.

(a) "Utah Level of Care Scale" means the results of an empirical, validated assessment of resident level of function using the Utah Level of Care Survey instrument.

(b) "Utah Level of Care Survey" means a survey which includes a set of behavioral observations that provide a cross-sectional profile of resident functional deficits and care needs. The scale defines six service pattern types which reflect simultaneous consideration of physical and psychosocial care needs.

R432-151-5. Treatment Programs.

The facility shall develop and maintain standards through written policies and procedures for staff participation and for resident services.

(1) Goals, objectives, and available programs for treatment of mental disease shall be developed in such a manner that performance and effectiveness can be measured.

(2) These standards shall comply with the rules and shall encourage both quality of care and quality of life.

R432-151-6. Program Standards.

(1) Each resident shall receive individualized treatment, which includes at least the following:

(a) Provision of treatment services, regardless of the source(s) of financial support;

(b) Provision of services in the least restrictive environment possible;

(c) Provision of an individualized resident care plan which has regular periodic review;

(d) Invitation for active participation by residents and their responsible parent, relative, friend, or guardian in the development of resident care plans;

(e) Competent, qualified, and experienced professional staff to implement and supervise the resident care plan.

(2) The facility shall develop policies to assure that services are provided with sufficient resources (such as program funds, staff, equipment, supplies, and space) to meet resident needs.

(3) The facility shall maintain programs, beds, and services that are available 24 hours a day, seven days a week.

(4) Written policies and procedures shall define what action is to be taken when maladaptive behavior exceeds criteria for program participation.

(5) Services not directly provided within the facility must have written agreements or arrangements to obtain such services whenever they are authorized or prescribed. Such services may include special assessments or therapeutic treatment programs.

(6) The facility shall establish written policies and procedures which include:

(a) Admission criteria which describe selection of the population served, including age groups and other relevant characteristics;

(b) The intake process;

(c) Criteria for resident participation in programs;

(d) Specific treatment modalities;

(i) Identify services provided in the modality; and

(ii) Identify goals and objectives of the modality;

(e) Crisis intervention and emergency services;

(f) Use of involuntary medication or physical restraints;

(g) Restrictive procedures;

(h) Methods to collect, process, report, and disseminate resident assessment data;

(i) Case coordination and case management;

(j) Development and periodic review of plans of treatment;

(k) Discharge planning;

(l) Staff in-service needs;

(m) Responsibility for medical and dental care;

(n) Provisions for family participation in the treatment program;

(o) Arrangements for clothing, allowances, and gifts;

(p) Provisions to allow resident departure from the facility as part of activities offered in the program;

(q) When the resident leaves the facility against medical advice.

(7) The facility shall develop job descriptions to delineate the roles and responsibilities of team members and to establish supervisory and organizational relationships.

(8) The professional staff shall determine qualifications required to assume specific responsibilities. Individual personnel files shall contain documentation to verify whether health care staff meet state and local requirements for certificates, licenses, or registrations.

(9) There shall be a written and dated consent form signed by the resident or the resident's legal guardian for the use of, participation in, or performance of the following:

(a) Surgical procedures;

(b) Procedures that place the resident at risk;

(c) Transfer;

(d) Other procedures where consent is required by law.

(10) The resident shall be allowed visitors, regardless of age, unless such visits are clinically contraindicated, and if so, the reasons must be documented by the professionals who made this decision.

(11) Areas shall be provided for residents to visit in private, unless such privacy is contraindicated and documented in the resident's record and plan of treatment.

R432-151-7. Environment.

(1) Each facility shall establish an environment to enhance a positive self-image of residents and preserve individual dignity.

(a) Programs which assume responsibility for security and yet maintain an open-door policy are encouraged.

(b) Treatment programs shall be conducted without disruption of, or disturbance to, other facility programs.

(2) The facility shall be designed, constructed, equipped, and operated to promote efficient and effective conduct of treatment programs and to protect health and safety both for the residents served and for the staff.

(3) The facility shall meet environmental needs of the residents.

(4) The facility shall provide adequate space for the program to carry out its goals.

(a) When resident needs or program goals include outdoor activity, areas and facilities shall be provided.

(i) Natural terrain and community resources may provide options for outdoor activities.

(ii) Other areas appropriate to resident activities may include an auditorium, stage, swimming pool, canteen, etc. (iii) Activities may take place within the community setting in affiliation with churches, schools, organizations, etc.

(b) Content of program plans shall describe circumstances for use of available resources, and when necessary, have written affiliation agreements.

(c) Recreational equipment must be maintained in working order.

(5) Design, location, and furnishings of program areas shall accommodate residents and visitors. The need for privacy or support from staff as well as goals of the facility programs shall be taken into consideration.

(6) Clocks and calendars shall be provided to promote awareness of time and season.

(7) Books, current magazines, and daily newspapers shall be available to the residents.

(8) Areas shall be available for a range of social activities from two-person conversations to group activities. Areas shall also be available where a resident can be alone when this is not in conflict with the individual's treatment program.

(9) Noise-producing equipment and appliances shall not interfere with other activities or the therapeutic program. Written policies and procedures shall address the use and location of this equipment such as radios, televisions, record players, musical instruments, tape players, etc.

(10) Space and general equipment shall be provided for table games and pursuit of individual hobbies.

(a) Equipment and games shall be accessible to residents.

(b) Hobby supplies, as well as arts and crafts materials used in therapeutic activity, shall be available according to residents' cultural or educational backgrounds and needs under the management of Activity Services.

(11) Dining areas shall be pleasant and promote a congenial, relaxed atmosphere.

(a) Dining rooms shall be supervised during meals by staff personnel to provide assistance and to ensure that each resident receives adequate amounts and varieties of foods.

(b) Food shall be served in an attractive and appetizing manner, as planned in menus, and at realistic mealtimes.

(c) Menus shall provide color and variety in meeting nutritional needs.

(d) Provisions shall be made in the menus and dining areas to cover special occasions, holidays, and weekends.

(e) The facility shall make available an area which allows resident access for preparation and serving of food, beverages, or snacks. Facility policy shall establish guidelines for resident use, such as leisure time activity, or, to offer rehabilitation or habilitation in a therapeutic environment.

(f) Bedrooms shall be assigned on the basis of the resident's need for group support, privacy, or independence.

(i) Rooms shall have doors for privacy, and an appropriate bed with mattress, pillow, fresh linens, and blankets furnished by the facility.

(ii) There shall be closet or storage space for personal items and clothing which the resident has and shall be allowed to use or wear.

(iii) The selection of residents assigned to a room shall be appropriate to the ages, development, and needs of the resident and to the goals of the program.

(iv) When rooms are shared, individual privacy must be provided by curtains, by partitions or by furniture arrangement.

(iv) Provision shall be made for residents who need extra sleep, who have sleep disturbances, or who need greater privacy.

(g) Residents shall be encouraged to maintain their sleeping and living areas and perform other day-to-day housekeeping activities to support non-impaired functioning, or to learn rehabilitation or habilitation responsibilities. Staff assistance and equipment shall be provided as needed.

(h) Residents shall be allowed to keep and display personal belongings and to add personal decorations to their rooms. The facility shall have written policies to govern use of decorative displays.

(i) Grooming and personal hygiene articles shall be readily accessible and shall be appropriate to the age, behavior, and clinical status of the resident.

(i) If access to potentially dangerous grooming aids or other personal items is contraindicated, a resident's personal articles may be kept under lock and key by the staff.

(ii) The professional staff must explain to the resident the conditions under which the articles may be used.

(iii) The treatment plan must also incorporate such restrictions and use.

(j) Good standards for grooming and personal hygiene including bathing, oral hygiene, care of hair and nails, and toilet habits shall be taught or maintained. Individual resident goals shall be written in the plans of treatment.

(k) Clothing shall be appropriate.

(i) Clothing shall be in good repair, of proper size, suited to the climate, and similar to clothing worn in the community.

(ii) Training and assistance in the selection and proper care of clothing shall be available as needed.

(iii) Training goals must be incorporated into the resident care plan.

(iv) An adequate amount of clothing shall be available to permit laundering, cleaning, and repair.

(l) Toilet and bathing facilities shall afford privacy with doors, toilet seats, partitions, and shower curtains.

(m) There shall be opportunity to participate in social events with persons of the opposite sex under adequate supervision.

(n) The resident shall retain possession of personal items such as tobacco products, cosmetics, watches, appliances, and money, except where possession may be restricted in the resident care plan.

(o) The resident shall have access to a personal funds account maintained by the business office or as specified by facility policy. Personal resource funds which a resident may have should be kept in this account.

R432-151-8. Construction and Physical Environment.

Refer to R432-5, Nursing Facility Construction.

R432-151-9. Administration and Organization.

(1) Program Director.

(a) The program director shall be a qualified health professional with a minimum of one year's experience in an established program for treatment of mental disease.

(b) The program director shall have a degree in administration, psychology, social work, nursing, or medicine and be licensed, certified or registered by the Utah Department of Commerce.

(c) The program director shall be appointed in writing by the governing body, and shall be accountable for the overall function of the program.

(d) The program director shall be accountable, whether by performance or by delegation, for the following functions:

(i) Develop written short-term and long-term goals for the treatment program;

(ii) Develop written policy and procedures, review them at least annually, and revise as necessary. Dates of review shall be documented;

(iii) Utilize quality assurance methods to assess efficiency and effectiveness of the program;

(iv) Supervise the development and implementation of each resident's individualized resident care plan;

(v) Supervise appropriate delivery of program modalities and services;

(vi) Integrate various aspects of the treatment program;

(vii) Maintain thorough clinical records for each resident;

(viii) Establish periodic reviews of each resident care plan;

(ix) Provide orientation for each new employee to acquaint them with the philosophy, organization, practices, and goals of the treatment program;

(x) Provide in-service training for any employee who has not achieved the desired level of competence;

(xi) Promote continuing education opportunities for all employees to update and improve their skills.

(2) Professional Staff.

(a) The facility shall have administrative, qualified health care professional, and support staff available to assess and address resident needs within its scope of services.

(b) Qualified professional staff includes psychiatrists, physicians, clinical psychologists, social workers, licensed nurses, and other health care professionals in sufficient number to provide services offered by the facility.

(c) When qualified professional staff members other than nursing staff are not available on a full-time basis, they shall be available on a part-time basis or by contract agreement to fulfill the requirements and needs of the treatment programs offered.

(d) The professional staff shall determine what qualifications are required to assume specific responsibilities.

(i) All members of the treatment team who have been assigned specific responsibilities shall be qualified for that position by training and experience.

(ii) Services shall be supervised by qualified, licensed personnel.

(e) All staff shall be licensed, certified or registered as required by the Utah Department of Commerce, Division of Occupational and Professional Licensing.

(i) The facility shall maintain documentation and copies of the license, certification, or registration for Department review.

(ii) Failure to ensure that employees are current for licensure, certification or registration may result in sanctions to the facility license.

(f) The facility shall have a Health Surveillance policy which conforms with R432-150-25(6).

(3) Orientation.

(a) These rules shall apply in addition to R432-149-11(4).

(b) All new employees shall be oriented to job requirements, personnel policies, and job training beginning the first day of employment.

(c) Documentation shall be signed by the employee and supervisor to indicate basic orientation has been completed during the first three months of employment.

(d) New employees shall receive orientation to the following:

(i) Administration, organization, policies and procedures, job training, responsibilities, and philosophy of the treatment program;

(ii) Resident rights;

(iii) Safety and security procedures for fire, disaster, and AWOL;

(iv) Symptoms of residents with maladaptive behaviors;

(v) Training how to respond appropriately to residents' sexual behavior;

(vi) Suicide precautions;

(vii) Procedures for first aid and medical emergencies;

(viii) Medical recording or charting; medication sheets if pertinent to the job assignment;

(ix) Reporting abuse, neglect and exploitation; and

(x) Quality assurance objectives.

(e) Registered nurses and licensed practical nurses will receive additional orientation to the following:

(i) Concepts of treatment for residents with mental disease;

(ii) Roles and functions of nurses in treatment programs for residents with mental disease;

(iii) Nursing policy and procedure manuals;

(iv) Psychotropic medications.

(4) Staff growth and development.

(a) These rules shall apply addition to R432-149-11.

(b) In-service sessions shall be planned in advance and shall be held at least quarterly.

(c) In-service education shall be available to all employees.

(i) Aides shall receive at least the following training:

(A) Basic health - to learn nursing skills in non-complicated nursing situations;

(B) Basic first aid;

(C) Communications;

(D) Introduction to human services;

(E) Understanding behavior - the resident's and the staff's; appropriate and inappropriate behaviors; responsibility to report undesirable behaviors to supervisors.

(ii) Licensed professional staff shall receive continuing education to keep informed of significant new developments and skills.

(iii) The facility should make use of opportunities outside the facility, such as workshops, institutes, seminars, and formal classes to supplement the facility's program of continuing education.

R432-151-10. Resident Evaluation.

(1) Evaluation - Recognition of mental health needs and intervention/treatment for residents should be considered, documented, and implemented.

(2) At least two of the following criteria, which can be verified through medical record documentation, shall be used to identify whether there is a need for evaluation of mental disease:

(a) When there are marked changes in the person's behavior;

(b) When behavioral and socially functional strengths become weaknesses, and to what extent this has occurred;

(c) When the mood of a resident is prolonged, exaggerated, and not in keeping with the circumstances of the attending situation and environment;

(d) When these abnormal exaggerated states extend over unusually long periods of time, whether lasting for days, weeks, or months; criteria for abnormal behavior involves depth, duration, and situations;

(e) When observations of behavior take into account the resident's postures, gestures, tone of voice, walk, ideas expressed, intellectual symptoms, emotions/emotional responses, and degree of motor activity;

(f) When there are special supervisory precautions recommended for the health and safety of the resident (situations such as suicidal; runaway; careless smoker; history of non-compliance with medication).

(3) Service patterns shall be determined using the Utah Level of Care Survey. The outcome may affect whether the facility should be considered an MDF.

R432-151-11. Admission.

(1) This section shall apply in addition to R432-149-19.

(2) Admission shall be determined by treatment program criteria and the needs of the residents.

(a) Admission criteria shall be clearly stated in writing in facility policies.

(b) Acceptance of a resident for treatment shall be based on the following:

(i) The resident requires treatment appropriate to the environmental restrictions and level of care provided by the facility;

(ii) The treatment required is appropriately provided within the program;

(iii) Alternative placement for less intensive care or less restrictive environment is not available.

(c) Admitting personnel will inform applicants during the intake process about the following:

(i) Services that are available;

(ii) Activities and goals of the treatment program;

(iii) Information shall be obtained during the intake process to facilitate development of a preliminary resident care plan.

R432-151-12. Resident Rights.

(1) These rules shall apply in addition to R432-150-9 and shall provide emphasis to resident rights.

(2) The facility shall support and protect the resident's basic rights as follows:

(a) being allowed to take responsibility for oneself;

(b) to be free to exercise judgement;

(c) to exist as an individual;

(d) to preserve unimpaired functions.

(3) These rights shall include the following:

(a) The resident has the right to receive treatment that does not create irreversible conditions.

(b) Residents shall be allowed to conduct private telephone conversations with family and friends.

(i) When therapeutic indications necessitate restrictions on visitors, telephone calls, or other communications, those restrictions shall be evaluated for therapeutic effectiveness by responsible staff at least every seven days.

(ii) Evaluations and determinations will be documented.

(iii) When limitations on visitors, telephone calls, or other communications are indicated for practical reasons due to expense of travel or long distance telephone calls such limitations shall be determined with participation of the resident and other persons involved.

(c) Each resident shall have the right to request the opinion of a consultant at his or her expense, or to request an in-house review of the individual treatment plan.

(d) Each resident shall be informed of his or her rights in a language and vocabulary the resident should understand.

(e) The resident shall have the right to be fully informed about the following:

(i) Rights and responsibilities of residents, including rules governing resident conduct and types of infractions that can result in restrictions or discharge.

(ii) Staff members who are responsible for resident care, their professional status, their staff relationship, and reasons for changes in staff;

(iii) Type of care, procedures, and treatment the resident will receive;

(iv) Use and disposition of special observation and audiovisual techniques;

(v) Risks, side effects, and benefits of medications and treatment procedures used;

(vi) Alternate treatment procedures that are available;

(vii) The right to refuse specific medications or treatment procedures and medical consequences as a result of such refusal;

(viii) Costs to be borne by the resident or family, and itemized cost, whenever possible, of services or treatment rendered;

(ix) Sources of reimbursement and any limitations placed on duration of services.

(f) The resident shall be informed immediately whenever a right is taken away and why. The circumstances to regain the right shall also be explained.

(g) Residents shall have the right to free exercise of religious beliefs and to participate in religious worship services. No individual will be coerced or forced into engaging in any religious activity.

R432-151-13. Resident Care Plans.

(1) These rules shall apply in addition to R432-150-17(4) and shall provide emphasis regarding resident care plans.

(2) The written resident care plan shall be based on a complete assessment of each resident, and should include the resident's physical, emotional, behavioral, social, recreational, legal, vocational, and nutritional needs.

(a) The facility staff shall obtain, review, and update assessment data.

(b) When information has been obtained by other facilities or agencies prior to the resident's admission, reports should be obtained which cover the required assessments.

(3) The preliminary resident care plan shall be completed within seven days of admission.

(a) Plans must be reviewed on a monthly basis for the first three months; thereafter at intervals determined by the interdisciplinary team but not to exceed every other month at approximately 60-day intervals.

(b) When a resident is discharged and readmitted, a new resident care plan must be developed.

(4) A physician or nurse practitioner shall assess each resident's physical health within five days prior to or within 48 hours after admission.

(a) A history and physical exam shall be done which includes appropriate laboratory work-up;

(b) a determination of the type and extent of special examinations, tests, or evaluations needed; and

(c) when indicated, a thorough neurological exam.

(5) A written comprehensive health assessment, compiled by professional staff members, shall include the following:

(a) Alcohol and drug history including the following:

(i) drugs used in the past;

(ii) drugs used recently, especially within the preceding 48 hours;

(iii) drugs of preference;

(iv) frequency with which each drug is used;

(v) route of administration of each drug;

(vi) drugs used in combination;

(vii) dosages used;

(viii) year of first use of each drug;

(ix) previous occurrences of overdose, withdrawal, or adverse drug reactions;

(x) history of previous treatment received for alcohol or drug abuse;

(b) Degree of physical disability and indicated remedial or restorative measures including:

(i) nutrition,

(ii) nursing,

(iii) physical medicine, and

(iv) pharmacologic intervention;

(c) Degree of psychological impairment and appropriate measures to be taken to relieve treatable distress or to compensate for non-reversible impairments;

(d) Capacity for social interaction and what appropriate rehabilitation or habilitation measures are to be undertaken, including group living experiences and other activities to maintain or increase the individual's capacity to independently manage daily living.

(e) A written emotional or behavioral assessment of each resident shall be entered in the resident's record. The assessment shall include the following:

(i) A history of previous emotional or behavioral problems and treatment;

(ii) The resident's current level of emotional and behavioral functioning;

(iii) A psychiatrist's evaluation within 30 days prior to or within one week after admission;

(iv) When indicated, a mental status assessment appropriate to the age of the resident;

(v) When indicated, psychological assessments which include intellectual and personality testing;

(vi) Other functional assessments such as language, self-care ability, and visual-motor coordination.

(f) A written social assessment of each resident shall include information about the following:

(i) Home environment;

(ii) Childhood history;

(iii) The resident's family circumstances; the current living situation; social, ethnic, and cultural background; sexual abuse;

(iv) Resident and family strengths and weaknesses;

(v) Military service history if applicable;

(vi) Financial resources;

(vii) Religion;

(g) A written activities assessment of each resident shall include information about current skills, talents, aptitudes, interests, and attitudes.

(h) A nutritional needs assessment shall be conducted and documented.

(i) When appropriate, a written vocational assessment of the resident shall include:

(i) Previous occupations including brief descriptions of the type of work, duration of employment, reasons for leaving, etc.;

(ii) Education history, including academic or vocational training;

(iii) Past experiences and attitudes toward work, present motivations, areas of interest, and possibilities for future education, training, or employment.

(j) When appropriate, a written assessment of the resident's legal status shall include:

(i) A history with information about competency, court commitment, prior criminal convictions, any pending legal actions;

(ii) The urgency of the legal situation;

(iii) How the individual's legal situation may influence treatment.

(k) The facility shall develop procedures which describe early intervention for symptoms that are life-threatening, are indicative of disorganization or deterioration, or may seriously affect the treatment process.

(l) The resident care plan shall comply with R432-150-17 and include the following:

(i) Treatment goals expressed as standards of achievement;

(ii) Services or treatment to be provided (based on assessments), at what intervals, and by whom;

(iii) Nutritional requirements;

(iv) Security precautions;

(v) Precautions and interventions for maladaptive behaviors;

(vi) Restrictions or loss of privileges, if any; factors to regain privileges;

(vii) Date the plan was initiated and dates of subsequent reviews;

(viii) Discharge planning.

R432-151-14. Active Treatment.

(1) Active treatment programs shall provide services reasonably expected to improve the resident's condition.

(2) Active Treatment services shall be offered in an environment that encompasses as many physical, interpersonal, cultural, therapeutic, rehabilitative, and habilitative components as necessary to achieve this purpose.

(3) Active treatment shall fulfill these objectives:

(a) To modify or minimize symptoms and conditions contributing to the need for treatment;

(b) To promote humane conditions, such as abilities to relate constructively, to care, and to fulfill human needs (affection, recognition, self-esteem, self-realization) within individual capabilities.

(c) If the planned or prescribed activities are primarily diversional in nature and thus provide only some social or recreational outlet for the resident, they shall not be regarded as active treatment to improve the resident's condition.

(d) Administration of a drug or drugs expected to significantly alleviate a resident's symptoms shall not of itself constitute active treatment.

(e) An active treatment program shall include the following components:

(i) Supervision by a physician.

(ii) An interdisciplinary professional evaluation.

(A) that is completed preferably before admission to the facility and definitely before the facility requests payment;

(B) that consists of complete medical diagnosis, social and psychological evaluations, and evaluation of the individual's need for psychiatric care;

(C) that is made by a psychiatrist (physician), a social worker, and other professionals, at least one of whom is

qualified by at least one year of experience in treatment of residents with mental disease.

(iii) Periodic reevaluation (preferably on a quarterly basis, but not to exceed six month intervals) medically, socially, and psychologically by the staff involved in carrying out the resident's individual plan of care. This reevaluation must include review of the individual's progress toward meeting the plan objectives, appropriateness of the plan of care, assessment of continuing need for institutional care, and consideration of alternative methods or placement for care.

(iv) An individualized written plan of care that sets forth measurable goals or objectives stated in terms of desirable behavior and that prescribes an integrated program of activities, experiences, or therapies necessary for the individual to reach those goals or objectives.

(v) A post-institutional plan, as part of the individual plan of care, developed by the interdisciplinary team prior to discharge. This plan must include considerations for follow-up services, protective supervision if necessary, and other services available as needed in the resident's new environment.

(vi) The resident's regular participation in professionally developed and supervised activities, experiences, or therapies in accordance with the resident's individualized plan of care.

R432-151-15. Special Treatment Procedures.

(1) The facility shall identify special treatment procedures that require justification for use, and shall develop standards governing the use of these procedures consistent with resident rights and facility policy.

(2) Standards must include:

(a) Use of seclusion and time out;

(b) Prescription and administration of drugs;

(c) Use of involuntary medication;

(d) Use of procedures that involve physical risk for the resident;

(e) Use of procedures to treat maladaptive behaviors other than use of painful stimuli.

(3) Use of painful stimuli is not allowed.

(4) Indications for use of special treatment procedures shall be documented in the resident's record.

R432-151-16. Security.

(1) The facility shall follow its established written procedure in the event of resident AWOL or elopement so that the resident is returned to the facility in as short a time as possible.

(2) In all cases of AWOL, the program director, family or significant others, and appropriate agencies outside the facility (police, highway patrol, etc.) shall be notified according to written facility policy and procedure.

(3) There shall be documentation and review of all aspects of the AWOL.

(a) Notation of the AWOL must be in the resident record with more detail in an incident report kept by the administrator.

(b) These reports shall be made available for Department review upon request.

(4) Facility policy shall define the staff's escort responsibility, conduct, and liability.

R432-151-17. Industrial Therapy.

(1) Job placement may be an element of resident treatment and may be offered to provide therapeutic benefit on an individual basis.

(2) The goal of the industrial program shall include development of the resident's skills to deal with situations and problems which happen on the job, to accept responsibility, and to perform under direction of supervisors.

(3) No resident shall work as a substitute for staff.

(4) The job placement shall comply with local, state, and federal laws and regulations.

(5) Compensation.

(a) Residents who have a job shall receive pay commensurate with the economic value of the work.

(b) The resident shall receive appropriate compensation for labor performed away from the facility.

(c) Residents may be encouraged to perform personal housekeeping tasks without compensation as part of a rehabilitation or habilitation program.

R432-151-18. Transfer Agreements.

(1) This section shall apply in addition to R432-150-10.

(2) Each referral to and from the facility shall be governed by criteria that the most effective treatment in the least restrictive environment shall be available and accessible to a resident.

(a) The staff shall assess resident needs and provide necessary services within the facility according to its treatment capabilities.

(b) Services of other facilities shall be utilized when the resident requires care beyond the capabilities of the facility. (3) Transfer agreements between facilities shall be obtained.

(a) Continuity of resident care shall be a joint responsibility between the facilities involved.

(b) Continuity of resident care is assured by providing:

(i) Reason(s) for the referral;

(ii) Information about the resident such as current treatment, medications, behavior, special precautions;

(iii) Current treatment objectives;

(iv) Suggestions for continued coordination between the receiving and referring facility;

(v) Information whom to contact, such as significant others or treatment coordinator.

(4) Residents shall not be transferred to another facility without prior contact with that facility. The referring treatment coordinator shall contact the receiving facility immediately or within 24 hours to insure temporary placement or admission.

(5) All information pertaining to clients shall be kept confidential and disclosed only by authorized staff to others directly involved in the resident's care and treatment except under the following conditions:

(a) When a resident's written informed consent is obtained to share specific information with appropriate parties;

(b) When an emergency exists with reason to believe there is imminent danger to the resident or others;

(c) When there is a court order to produce specific records;

(d) When the law enforcement agency requires release of specific pertinent information.

R432-151-19. Physician Services.

(1) This section shall apply in addition to R432-150-21.

(2) A physician should be responsible to monitor physical or medical needs; a psychiatrist must be responsible to monitor mental health needs and medications prescribed for these needs.

(3) General requirements.

(a) Each resident in need of psychiatric services shall be under the care of a psychiatrist licensed to practice in Utah.

(b) Each resident shall be permitted to choose a personal psychiatrist.

(c) Psychiatrist responsibilities.

(i) A psychiatrist must complete a psychiatric evaluation within 30 days prior to, or within one week after, admission.

(ii) Requirements for psychiatrist visits shall be the same as requirements for physician visits in R432-150-21. EXCEPT:

(A) Whenever possible, visits should be made on alternating months from physician visits.

(B) The psychiatrist shall see the resident whenever necessary but at least every other month at approximately 60-day intervals.

(C) The psychiatrist may have the option to establish and follow an alternate schedule of visits, but visits must not exceed four month intervals.

(D) A progress note shall be written in the resident's record at each visit.

R432-151-20. Nursing Services.

(1) Nursing services shall be available to residents who require such services.

(2) There shall be nursing staff available according to Table 1 to meet medical needs.

(a) There shall be 24-hour licensed nurse coverage.

(b) In a skilled nursing facility, a registered nurse shall be on duty at least sixteen hours per 24-hour period seven days a week to plan, assign, supervise or provide, and evaluate nursing care needs of the residents.

(3) All prescribed medications shall be administered by licensed personnel.

(4) In an intermediate care facility, if the health services supervisor is a licensed practical nurse, the registered nurse consultant shall be contacted within three days of a new admission to review the resident care plan.

(5) Schedules shall be maintained to indicate hours worked in the treatment program by regularly assigned and relief registered nurses, licensed practical nurses, and aides. The facility shall retain staff schedules and payroll records for at least a 12-month period.

(6) Aides performing housekeeping, dietary, or other functions shall maintain time records reflecting actual time spent in nursing care and time spent in other tasks. Time spent in other tasks will not be included in nursing care staffing ratios.

(7) Table 1 represents the minimum acceptable standards for hours of nursing care; additional staffing time may be necessary to accommodate variables such as staff illness or vacation, resident census, or status and behavior of residents.

TABLE 1

HOURS OF NURSING CARE PER SKILLED AND INTERMEDIATE LEVEL RESIDENT

Type of Resident	Total Nursing Hours per Resident per 24 hrs. (RN + LPN + Aide)	Licensed Nursing Hours per resident per 24 hrs. (RN + LPN only)
SKILLED	2.5 (150 minutes)	30% (45 minutes)(a)
INTERMEDIATE	2.0 (120 minutes)	30% (36 minutes)(a)

(a) Shall not include director of nursing or health services supervisor in a facility with a resident census over 60.

R432-151-21. Resident Records.

(1) These rules shall apply in addition to R432-150-27 and shall provide emphasis regarding resident records.

(2) Contents of the resident record shall describe the resident's physical and mental health status at the time of admission, the services provided, the progress made, and the resident's physical and mental health status at the time of discharge.

(3) The resident record shall contain the following:

(a) Identifying data that is recorded on standardized forms:

(i) the resident's name;

(ii) home address;

(iii) home telephone number;

(iv) date of birth;

(v) sex;

(vi) race or ethnic origin;

(vii) next of kin;

(viii) education;

(ix) marital status;

(x) type and place of last employment;

(xi) date of admission;

(xii) legal status, including relevant legal documents;

(xiii) date the information was gathered; and names and signatures of the staff members gathering the information.

(b) Information for review and evaluation of treatment provided to the resident.

(c) Documentation of resident and family involvement in the treatment program.

(d) Prognosis.

(e) Information on any unusual occurrences, such as treatment complications; accidents or injuries to or inflicted by the resident, procedures that place the resident at risk, AWOL.

(f) Physical and mental diagnoses using a recognized diagnostic coding system.

(g) Progress notes written by the physician, psychiatrist. nurse, and others involved in active treatment.

(i) progress notes should contain an on-going assessment of the resident.

(ii) Progress notes shall be written in the resident's record by each professional discipline at least monthly for the first three months and every other month thereafter at approximately 60 day intervals.

(iii) Progress notes shall be summaries of notes written at more frequent intervals, as determined by the condition of the resident or by facility policy, including the following:

(A) Documentation which supports implementation of the resident care plan and the resident's progress toward meeting these planned goals and objectives;

(B) Documentation of all treatment and services rendered to the resident;

(C) Chronological documentation of the resident's clinical course;

(D) Descriptions of changes in the resident's condition;

(E) Descriptions of resident response to treatment, the outcome of treatment, and the response of significant others to these changes.

(iv) All entries involving subjective interpretation of the resident's progress should be supplemented with a description of the actual behavior observed.

(v) Efforts should be made to secure written progress reports from outside sources for residents receiving services away from the facility.

(h) Reports of laboratory, radiologic, or other diagnostic procedures, and reports of medical or surgical procedures when performed;

(i) Correspondence and signed and dated notations of telephone calls concerning the resident's treatment.

(j) A written plan for discharge including information about the following:

(i) Resident's preferences and choices regarding location and plans for discharge;

(ii) Family relationships and involvement with the resident;

(iii) Physical and psychiatric needs;

(iv) Realistic, basic financial needs;

(v) Housing needs;

(vi) Employment needs;

(vii) Educational/vocational needs;

(viii) Social needs;

(ix) Accessibility to community resources;

(x) Designated and documented responsibility of the resident or family for follow-up or aftercare.

(k) A discharge summary signed by the physician and entered into the resident record within 60 calendar days from the date of discharge;

(i) In the event a resident dies, the discharge statement shall include a summary of events leading to the death.

(ii) Transfer to another facility for more than 72 hours shall cause the resident record to be closed with a discharge summary.

(A) A new record shall be initiated at the time of readmission.

(B) If the interval from discharge to readmission is less than 30 days, previous assessments may be reviewed and a copy brought forward from the prior record. The assessment must be identified either as an original or as a copy, and include updated information.

(l) Reports of all assessments.

(m) Consents for release of information, the actual date the information was released, and the signature of the staff member who released the information:

(i) The facility may release pertinent information to personnel responsible for the individual's care without the resident's consent under the following circumstances:

(A) In a life-threatening situation;

(B) When an individual's condition or situation precludes obtaining written consent for release of information;

(C) When obtaining written consent for release of information would cause an excessive delay in delivering treatment to the individual.

(ii) When information has been released under the conditions listed in R432-151-21(3)(m), the transaction shall be entered into the resident's record, including at least the following:

(A) The date the information was released;

(B) The person to whom the information was released;

(C) The reason the information was released;

(D) The reason written consent for release of information could not be obtained;

(E) The specific information released;

(F) The name of the person who released the information.

(iii) The resident shall be informed of the release of information as soon as possible.

(n) Pertinent prior records available from outside sources.

(4) The confidentiality of the records of substance abuse residents shall be maintained according to 42 CFR, Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records."

R432-151-23. Quality Assurance.

(1) This section shall apply in addition to R432-150-29.

(2) The quality, appropriateness, and scope of services rendered shall be reviewed and evaluated on at least a quarterly basis by an interdisciplinary quality assurance committee.

(3) A written report of findings from each meeting shall be submitted to the administrator and shall be available for review by the Department.

(4) Committee composition.

(a) Members of the quality assurance committee shall be appointed by name in writing by the administrator for a given term of membership.

(b) The committee shall have a minimum of three members with representation from at least three different licensed health care professions.

(5) Methodology for evaluation includes:

(a) Review and evaluation of active and closed resident records to assure that established policies and procedures are being followed;

(b) Facility policy and procedure will determine the method(s) to be followed for selection and review of the representative sample of active and closed records;

(c) Review and evaluation whether needed services were provided;

(d) Review and evaluation of coordination of services whenever appropriate through documentation of written reports, telephone consultation, or case conferences; and

(e) Review and evaluation of the resident plans of treatment for content, frequency of updates, and whether progress notes correspond to goals stated in the resident care plan.

R432-151-24. Housekeeping.

Housekeeping services shall comply with R432-150-16(2).

KEY: health facilities

March 3, 1995 26-21-5

Notice of Continuation January 20, 1998 26-21-16

R497. Human Services, Administration, Administrative Hearings.

R497-100. Adjudicative Proceedings.

R497-100-1. Definitions.

The terms used in this rule are defined in Section 63-46b-1. In addition,

(1) For the purpose of this section the "agency" of the Department of Human Services includes the Division of Child and Family Services (DCFS), the Division of Services to People with Disabilities (DSPD), the Division of Youth Corrections (DYC), the Division of Aging and Adult Services (DAAS), the Division of Mental Health (DMH), the Division of Substance Abuse (SA), the Office of Licensing (OL), the Utah State Developmental Center (USDC), the Utah State Hospital (USH), and any boards, commissions, officers, councils, committees, bureaus, or other administrative units, including the Executive Director and Director of the Department or other persons acting on behalf of or under the authority of the Executive Director or Director. For purposes of this section, the term "Department of Human Services" does not include the Office of Recovery Services (ORS). The rules regarding ORS are delineated at R527-200.

(2) "Agency actions or proceedings" of the Department of Human Services include the following:

(a) a denial, termination, suspension, or reduction of eligibility for Home Energy Assitance Target Program;

(b) due process hearings afforded to foster parents prior to removal of a foster child from their home (62A-4a-206);

(c) the denial, revocation, modification, or suspension of any Department foster home license, or group care license;

(d) the denial, revocation, modification or suspension of a license issued by the Office of Licensing pursuant to 62A-2-101, et seq.;

(e) the certification of DUI instructors, approval of DUI curriculum, and the certification of Alcohol Server Training programs by the Division of Substance Abuse;

(f) the licensure of community alternative programs by the Office of Licensing;

(g) actions to designate mental health professionals as designated examiners or mental health officers pursuant to 62A-12-202;

(h) actions by the Division of Youth Corrections and the Youth Parole Authority relating to granting or revocation of parole, discipline or, resolution of grievances of, supervision of, confinement of or treatment of residents of any youth corrections facility or institution;

(i) resolution of client grievances with respect to delivery of services by private, nongovernmental, providers within the Department's service delivery system;

(j) actions by Department owned and operated institutions and facilities relating to discipline or treatment of residents confined to those facilities;

(k) placement and transfer decisions affecting involuntarily committed residents of the Utah State Developmental Center pursuant to 62A-5-313 and 62A-5-317;

(l) protective payee hearings;

(m) Department records amendment hearings held pursuant to Section 63-2-603.

(3) "Aggrieved person" includes any applicant, recipient or person aggrieved by an agency action.

(4) "Office" means the Office of Administrative Hearings in the Department of Human Services.

(5) "Presiding officer" means an agency head, or individual designated by the agency head, by these rules, by agency rule, or by statute to conduct an adjudicative proceeding and may include the following:

(a) hearing officers;

(b) administrative law judges;

(c) division and office directors;

(d) the superintendent of agency institutions;

(e) statutorily created boards or committees.

R497-100-2. Exceptions.

The provisions of this section do not govern the following:

(1) The procedures for promulgation of agency rules, or the judicial review of those procedures. See Subsection 63-46b-1(2)(a).

(2) Department actions relating to contracts for the purchase or sale of goods or services by and for the state or by and for the Department, including terminations of contracts by the Department.

(3) Initial applications for and initial determinations of eligibility for state-funded program eligibility determinations.

R497-100-3. Form of Proceeding.

All adjudicative proceedings commenced by the Department of Human Services or commenced by other persons affected by the Department of Human Services' actions shall be informal adjudicative proceedings.

R497-100-4. Commencement of Proceedings.

(1) All adjudicative proceedings shall be commenced by either:

(a) a notice of agency action, if proceedings are commenced by the agency; or

(b) a request for agency action, if proceedings are commenced by persons other than the agency.

(2) (a) When adjudicative proceedings are commenced by the agency, the notice of agency action shall be in writing, signed by the designated presiding officer, and shall include:

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

(ii) the agency's file number or other reference number;

(iii) the name of the adjudicative proceeding;

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

(v) a statement that the adjudicative proceeding is to be conducted informally;

(vi) if a hearing is to be held in an informal adjudicative proceeding, a statement of the time and place of any scheduled hearing, a statement of the purpose for which the hearing is to be held, and a statement that a party who fails to attend or participate in the hearing may be held in default;

(vii) if the agency's rules do not provide for a hearing, a statement that the parties may request a hearing within ten working days of the notice of agency action;

(viii) a statement of the legal authority and jurisdiction

under which the adjudicative proceeding is to be maintained;

(ix) the name, title, mailing address, and telephone number of the presiding officer; and

(x) a statement of the purpose of the adjudicative proceeding and, to the extent known by the presiding officer, the questions to be decided.

(b) The agency shall:

(i) mail the notice of agency action to each party; and

(ii) publish the notice of agency action if required by statute.

(c) Where the law applicable to the agency permits persons other than the agency to initiate adjudicative proceedings, that person's request for agency action shall be in writing and signed by the person invoking the jurisdiction of the agency, or by his representative, shall be filed and shall include:

(i) the names and addresses of all persons to whom a copy of the request for agency action is being sent;

(ii) the agency's file number or other reference number;

(iii) the name of the adjudicative proceeding, if known;

(iv) the date that the request for agency action was mailed;

(v) a statement of the legal authority and jurisdiction under which agency action is requested;

(vi) a statement of the relief sought from the agency; and

(vii) a statement of the facts and reasons forming the basis for relief.

(d) In the case of adjudicative proceedings commenced under Subsection (2)(c) by a person other than the agency, the presiding officer shall within ten working days give notice by mail to all parties. The written notice shall:

(i) give the agency's file number or other reference number;

(ii) give the name of the proceeding;

(iii) designate that the proceeding is to be conducted informally;

(iv) if a hearing is to be held in an informal adjudicative proceeding, state the time and place of any scheduled hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate in the hearing may be held in default;

(v) if the agency's rules do not provide for a hearing, state the parties' right to request a hearing within ten working days of the agency's response; and

(vi) give the name, title, mailing address, and telephone number of the presiding officer.

R497-100-5. Availability of Hearing.

(1) Hearings may be held in any informal adjudicative proceedings conducted in connection with an agency action if the aggrieved party requests a hearing and if there is a disputed issue of fact. If there is no disputed issue of fact, the presiding officer may deny a request for a hearing and determine all issues in the adjudicative proceeding, if done in compliance with the policies and standards of the applicable agency. If the aggrieved person objects to the denial of a hearing, that person may raise that objection as grounds for relief in a request for reconsideration.

(2) There is no issue of fact if:

(a) the aggrieved person tenders facts which on their face establish the right of the agency to take the action or obtain the relief sought in the proceeding;

(b) the aggrieved person tenders facts upon the request of the presiding officer and the fact does not conflict with the facts relied upon by the agency in taking its action or seeking its relief.

R497-100-6. Procedures for Informal Proceedings.

In compliance with 63-46b-5, the procedure for the informal adjudicative proceedings is as follows:

(1) (a) The respondent to a notice of agency action or request for agency action may, but is not required to, file an answer or responsive pleading to the allegations contained in the notice of agency action or the request for agency action within 10 working days following receipt of the adverse party's pleading.

(b) A hearing shall be provided to any party entitled to request a hearing in accordance with Section 63-46b-5.

(c) In the hearing, the party named in the notice of agency action or in the request for agency action may be represented by counsel and shall be permitted to testify, present evidence and comment on the issues.

(d) Hearings will be held only after a timely notice has been mailed to all parties.

(e) Discovery is prohibited, and the office may issue subpoenas or other orders to compel production of neccessary evidence. The office may require that parties exchange documents prior to the hearing in order to expedite the process. All parties to the proceedings will be responsible for the appearance of witnesses.

(f) All parties shall have access to information contained in the agency's files and to all materials and information gathered in any investigation, to the extent permitted by law.

(g) Intervention is prohibited, except that intervention is allowed where a federal statute or rule required that a state permit intervention.

(h) Within a reasonable time after the close of the hearing, or after the party's failure to request a hearing within the time prescribed by the agency's rules, the presiding officer shall issue a signed order in writing that states the following:

(i) the decision;

(ii) the reasons for the decision;

(iii) a notice of any right of administrative or judicial review available to the parties; and

(iv) the time limits for filing an appeal or requesting a review.

(i) All hearings shall be open to all parties.

(j) The presiding officer's order shall be based on the facts appearing in the agency's files and on the facts presented in evidence at the hearings.

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

(2) All hearings shall be tape recorded at the office's expense. Any party, at his own expense, may have a reporter approved by the agency prepare a transcript from the office's record of the hearing. The hearing tape will be maintained for 45 days after the hearing decision has been issued pursuant to Section 63-46b-5(i).

R497-100-7. Agency Review.

Agency review shall not be allowed. Nothing contained in this rule prohibits a party from filing a petition for reconsideration pursuant to 63-46b-13.

R497-100-8. Scope and Applicability.

The provisions of this section supersede the provisions of any other Department rules which may conflict with the foregoing rules.

KEY: administrative procedure, social services
January 26, 1998 62A-1-110
Notice of Continuation June 21, 1996 62A-1-111

R510. Human Services, Aging and Adult Services.
R510-100. Funding Formulas.
R510-100-1. Older Americans Act.

(1) Compliance with State and Federal Law for Older Americans Act (OAA).

(a) The Division of Aging and Adult Services (Division) shall develop an intrastate funding formula for distribution of OAA, Title III: Grants for State and Community Programs on Aging funds and State general funds for social and nutrition services which complies with 45 CFR, Subchapter C, Part 1321.37 and with Section 62A-3-108.

(b) The formula shall be reviewed whenever a new State Plan on Aging is required to be submitted.

(2) Affected Funding Sources for OAA.

(a) The funding formula shall include:

(i) All federal funds received under Title III of the OAA with the exception of:

(A) Allowable State Division administrative funds, and

(B) Funds allocated to the State-delivered Long-Term Care Ombudsman Program.

(ii) All state funds appropriated for Title III social and nutrition services.

(b) The funding formula shall not include state or federal funds appropriated for:

(i) The Alternatives Program,

(ii) Adult Services under the Division, or

(iii) Funds identified under Section 62A-3-108(2).

(3) Funding Formula Factors for OAA.

(a) The funding formula shall incorporate the following factors:

(i) Base factor divided equally among the twelve Area Agencies on Aging (AAA) in existence on July 1, 1986;

(ii) Population factor comprised of each AAA's proportion of the State's weighted elderly population; and

(iii) Land area factor consisting of each AAA's proportion of the State's total adjusted square miles.

(b) Weighted elderly population shall consist of:

(i) The number of persons age 60 and over who have annual incomes below 125% of the poverty level, plus

(ii) The number of persons age 75 and over weighted two times, plus

(iii) The number of minority persons, Hispanic, Native American, Asian/Pacific Islander, and Blacks, age 60 and over.

(c) All population figures utilized shall reflect the most recent U.S. census figures adjusted on an annual basis based on available population estimates from the Utah State Office of Planning and Budget.

(4) Base Restrictions for OAA.

(a) If any AAA in existence on July 1, 1986, should in the future sub-divide into two or more AAAs, the base amount allocated to the original AAA shall be divided proportionally among the new AAA.

(5) Funding Distribution for OAA.

(a) Distribution of funds under the formula shall be as follows:

(i) 7.5% of total formula funds allocated to the base factor;

(ii) 7.5% of total formula funds allocated to the land area factor; and

(iii) 85% of total formula funds allocated to the population factor.

R510-100-2. In-Home Services.

(1) Affected Funding Sources for In-Home Services.

(a) The funding formula shall include all federal and state funds used for in-home services with the exception of:

(i) funds allocated under Section R510-100-1 and

(ii) funds identified under Section 62A-3-108(2), and

(iii) Adult Services funded under the Division pursuant to Section 62A-3-301 et seq.

(2) Funding Formula Factors for In-Home Services.

(a) The funding formula shall include the following factors:

(i) Land area factor consisting of each AAA's proportion of the state's total adjusted square miles.

(ii) Population factor comprised of each AAA's proportion of the designated population factors.

(iii) Base amount of $16,000 allocated to each Area Agency on Aging.

(b) Designated population factors shall consist of the following:

(i) The number of minority persons, Hispanic, Native American, Asian/Pacific Islanders and Blacks, age 60 and over weighted 10%,

(ii) The number of all persons age 18-59 weighted 5%,

(iii) The number of all persons age 60 years and over weighted 55%, and

(iv) The number of all persons age 75 years and over weighted 30%.

(c) All population figures utilized shall reflect the most recent U.S. census figures adjusted on an annual basis based on available population estimates from the Utah State Office of Planning and Budget.

(3) Funding Distribution for In-Home Services.

(a) Distribution of funds under the formula will be as follows:

(i) 10% of total formula funds allocated to the land area factor; and

(ii) 90% of total formula funds allocated to the population factor.

(4) Funding Formula Phase-In for In-Home Services.

(a) Funds allocated in fiscal year 1993 shall be held harmless.

(b) New funds above the fiscal year 1993 level shall be allocated by the in-home services funding formula.

R510-100-3. Long-Term Care Ombudsman Program.

(1) Affected funding sources for the Long-Term Care Ombudsman (LTCO) Program.

(a) All Federal and State funds received for delivery of the LTCO Program with the exception of State Division administrative funds.

(i) Funding Formula for the LTCO Program.

The funding formula for the LTCO Program shall allocate dollars to each designated AAA based on the following factors:

(A) Federal Funds.

Using the base allocation of federal funds available for the LTCO program during State Fiscal Year 1993, each designated AAA will receive an equal share of the dollars available.

Additional funds that may become available above the base allocation will be distributed based on each AAA proportion of long-term care beds in the State as reported by the State Department of Health and the Division for the preceding year. Long-term care beds shall include licensed nursing facility beds, licensed residential care beds, and approved adult foster care beds.

(B) State General Funds.

A base allocation of $60,000 shall be distributed equally to each designated AAA.

State General funds in excess of this base allocation shall be distributed based on each AAA's proportion of long-term care beds in the State, as reported by the State Department of Health and the Division for the preceding year.

KEY: elderly, funding formula*, long-term care ombudsman*
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Notice of Continuation January 8, 1998

R510. Human Services, Aging and Adult Services.
R510-101. Carryover Policy for Title III: Grants for State and Community Programs on Aging.
R510-101-1. Policy.

In accordance with Federal regulation 45 CFR, Chapter XIII Subchapter C, Part 1321.37, the Division of Aging and Adult Services distributes OAA Title III social and nutrition dollars to AAA according to an established intrastate funding formula. All Title III funds of a specified federal year unspent at the end of that year's state contract period shall be re-contracted to the AAA in the succeeding year's contract. Administration of federal carryover funds must conform with federal laws and regulations. All Title III funds carried over by the AAA from one state fiscal year to the next must be spent according to a written amendment to the Area Plan as approved by the Division.

R510-101-2. Process.

2.1 The amounts of carryover funds in all Title III categories shall be determined at the time of the final state fiscal year financial report as submitted by the AAA and as reviewed and finalized by the Division.

2.2 Upon Division approval of an Area Plan amendment which designates amount and use of carryover funds, the Division will amend the current state year AAA contract to add all Title III carryover funding from the previous year.

2.3 The Division shall spend out the previous year's funds prior to spending current funds.

KEY: elderly, carryover funding*
1987 62A-3-104
Notice of Continuation January 8, 1998

R510. Human Services, Aging and Adult Services.
R510-102. Amendments to Area Plan and Management Plan.
R510-102-1. Area Plan Amendments.

A. Area Plan Amendments will be made only with the approval of the Division.

B. The AAA must submit Area Plan amendments in accordance with the uniform area plan format and other instructions issued by the Division.

KEY: elderly, service coordination
1992 62A-3-104
Notice of Continuation January 8, 1998

R510. Human Services, Aging and Adult Services.
R510-103. Use of Senior Centers by Long Term Care Facility Residents and Senior Citizens' Groups Participating in Activities Outside Their Planning and Service Area.
R510-103-1. Criteria for Use.

A. Eligibility: Long term care facility residents and visiting seniors outside their planning and service area shall have access to senior centers and programs operated within which receive financial assistance through the Older Americans Act (OAA), Social Services Block Grant, or any other source of federal funds.

B. Fees and Contributions:

(1) Facility residents and visiting seniors outside their planning and service area who individually participate and who are age 60 or over are encouraged to donate at the contribution rate as established by the responsible AAA Advisory Council and/or Nutrition Council for all programs. The amount of contribution will be confidential.

(2) Facility residents and visiting seniors outside their planning and service area who are under age 60 shall be subject to the fee for participants under 60 as established by the responsible AAA Advisory Council and/or Nutrition Council.

(3) Long term care residents and visiting seniors outside their planning and service area who elect to take a special class or participate in an activity where there is a charge will be required to pay the fee in accordance with the senior center's policy. This would include requested transportation costs to and from such activities.

(4) The source of contributions and fees for group participants shall be the long term care facility's or the visiting senior citizen center's outside of the planning and service area responsibility if the use of senior centers is an activity planned by the long term care facility or the visiting senior citizen center outside of the planning and service area.

(5) Contributions and fees shall not originate from the resident's personal needs allowance unless participation in the senior center is totally at the request of an individual or their family or legally responsible person, and participation in senior centers is not a component of the facility's activity plan.

(6) Visiting senior center groups shall be given an opportunity to donate a confidential contribution to the planned group activity.

C. Supervision: Residents who participate in the senior center programs as part of a long term care group planned activity and/or who require supervision shall be accompanied by

a facility staff member or other responsible parties.

D. Advance Reservations: As is the standard policy for all senior center participants, activities by long term care facility residents and visiting seniors outside their planning and service area who participate in senior center activities shall require an advanced reservation.

E. Complaints Regarding Adherence:

(1) All complaints regarding adherence to this regulation by senior centers should first be reported to the appropriate AAA Director. If this action does not resolve the complaint, the concern should be directed to the Division of Aging and Adult Services.

(2) All complaints regarding adherence to this regulation by long term care facilities should first be reported to the facility administrator. If this action does not resolve the complaint, the concern should be directed to the State Long Term Care Ombudsman (LTCO) Program where its resolution will be coordinated with the appropriate agencies.

KEY: elderly, senior centers, nursing homes
1990 62A-3-104(4)
Notice of Continuation January 8, 1998 62A-3-107 through 108

R510. Human Services, Aging and Adult Services.
R510-106. Minimum Percentages of Older Americans Act, Title III: Grants for State and Community Programs on Aging Part B: Supportive Services and Senior Centers Funds That an Area Agency on Aging Must Spend on Access, In-home and Legal Assistance.
R510-106-1. General Principles.

A. In accordance with the (OAA), as amended in 1987, the following general principles apply to setting minimum percentages which must be spent for Access, In-Home, and Legal Assistance:

(1) In-Home, Access, and Legal Assistance are priority services.

(2) "The minimum percentage is intended to be a floor, not a ceiling. AAAs are encouraged to devote additional funds to each of these service areas to meet local needs." (Source: House of Representatives Conference Report regarding this Amendment.)

(3) AAAs should be given flexibility to administer their programs at the local level.

(4) The minimum percentage should be applied to both Title IIIB and State Service Dollars.

B. The minimum percentages shall be established at: 8% for Access Services, 8% for In-Home Services, and 2% for Legal Assistance.

C. The minimum percentages will be based upon Title III B dollars and State Service dollars that are distributed by formula to the AAAs.

D. The minimum percentages will be reviewed by the State by June 1, 1989.

R510-106-2. Criteria for Approval of Title IIIB Priority Services Waiver.

A. AAAs which do not plan to fund a Title IIIB priority category of service at the required minimum percentage must request a waiver. In order to be approved, the waiver request must demonstrate to the State that the need for the service is adequately met through other means.

(1) The waiver request must include:

(a) Category(ies) of service to be waived, i.e. access, in-home, or legal.

(b) Extent of waiver requested, i.e. request to provide zero funding or request to provide some funding, but not at the minimum percentage required.

(c) Justification that services provided in the planning and service area for the waiver category are sufficient to meet the need. Justification should include: types of services in the category available in the planning and service area, funding sources and amounts available, history of service usage, needs assessment data, sources of information, efforts to publicize services, comments from providers of services, waiting lists, etc.

(d) Documentation of public hearing including:

(e) Copy(ies) of publicity for hearing.

(f) Lists of individuals and agencies notified.

(g) Record of public hearing.

B. In order for the Area Agency on Aging (AAA) to demonstrate public input into the waiver request through a public hearing, it is recommended that the AAA:

(1) Publicize the hearing in advance so that interested parties can arrange to attend.

(2) Use publicity means that will enable potentially interested parties to be aware of the hearing, to have sufficient background to understand the purpose of the hearing, and to be able to testify at the hearing if desired. In addition to a legal notice in the classified section of a newspaper, letters, flyers, larger newspaper articles or other similar announcements are recommended for the purpose of granting a waiver.

(3) Notify interested parties of the hearing, such as those individuals or groups specified below:

(a) All Categories of Service: Clients, potential clients, senior advocates, local advisory council members, designated state advisory council member for the area, representatives or relatives of clients, local elected officials, Department of Human Services, agency staff, and State Division of Aging and Adult Services staff, etc.

(b) Access Services: Information and referral providers, public or private transportation providers, outreach staff.

(c) In-Home Services: Chore provider agencies, home health agencies, local health departments, homemaker provider agencies, friendly visitor and telephone reassurance agencies and/or volunteers, homemakers, personal care aides, and home health aides.

(d) Legal Assistance: Legal Services Developer, Utah Legal Services Corporation, representatives of the Utah Bar Association.

KEY: elderly
1988 62A-3-101 et seq.
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R510. Human Services, Aging and Adult Services.

R510-107. Title V Senior Community Service Employment Program Standards and Procedures.

R510-107-1. Purpose.

1.1 Provide useful part-time community service employment for persons with low incomes who are 55 years old or older and provide useful community services.

R510-107-2. Definitions.

2.1 The following definitions apply to all sections of this part:

A. Eligible Individuals - means a person who is 55 years of age or older and who has a low income as defined in this section.

B. Eligible Organization - means an organization which is legally capable of receiving and using Federal Funds under Title V of the Older Americans Act.

C. Enrollment and Training Programs - means publicly funded efforts designed to offer training and/or placement services which enhance an individuals employability. The term is used in this part to include but not be limited to the Job Training Partnership Act or similar successor legislation and state or local programs of a similar nature.

D. Enrollee - means an individual who is eligible, receives services, and is paid wages for engaging in community service employment under a project.

E. Contract Agreement - means a legally binding agreement in document form which is a contract entered into between the Utah State Division of Aging and Adult Services and an eligible organization and which awards Federal Funds and provides for authorized activities under Title V of the Older Americans Act.

F. Host Agency - means a public agency or a private nonprofit organization, other than a political party, exempt from taxation under the provisions of section 501(c)(3) of the Internal Revenue Code of 1954, which provides a work site and supervision for an enrollee.

G. Low Income - means, for purposes of this part, an income which, during the preceding 6 months on an annualized basis or the actual income during the preceding 12 months, whichever is more beneficial to the applicant, is not more than 125 percent of the poverty levels established and periodically updated by the U.S. Department of Health and Human Services. In addition, an individual who receives or is a member of a family which receives regular cash welfare payments shall be deemed to have a low income for purposes of this part.

H. Project - means an undertaking by a project sponsor pursuant to a grant agreement between the Department of Labor and a project sponsor which provides for the employment of eligible individuals and the delivery of associated services.

I. Project Sponsor - means an eligible organization which has entered into a grant agreement with the Department of Labor.

J. Project Year - means the 12-month period covered by a grant agreement.

K. Reallocation - means the redistribution of Title V funds as proposed by the Department of Labor from one State to another State(s) or from one project sponsor to another project sponsors(s).

L. SCSEP - means Senior Community Service Employment Program as authorized under Title V of the Older Americans Act.

M. State Agency on Aging - means the Utah State Division of Aging and Adult Services.

N. Subproject Agreement or Contract - means an agreement entered into between a project sponsor and an organization which provides for the transfer of Federal Funds to the organization for the purpose of carrying out activities authorized in the grant agreement.

O. Subproject Sponsor - means an organization which has entered into a subproject agreement or contract with the Utah State Division of Aging and Adult Services.

P. Temporary Position - means an enrollment opportunity in addition to the authorized positions made available during a project year when a portion of project funds is not being used as planned in the grant agreement.

R510-107-3. Responsibilities.

3.1 Subproject sponsor/host agency responsibilities are to provide enrollees:

A. Opportunities for skill acquisition or skill enhancement.

B. Annual physical examinations or signed waiver.

C. Personal and employment-related counseling.

D. Assistance in transition to unsubsidized employment where it is feasible.

E. Recruitment and selection of enrollees.

F. Agency orientation.

G. Assessment on suitability of job assignment.

H. Annual determination of eligibility for SCSEP.

I. Assistance in transition to unsubsidized employment where feasible.

J. Select community service employment occupational categories and work assignments for enrollees.

3.2 State Agency Responsibilities

A. Develop an annual pre-application grant for Title V to be approved by the Department of Labor in order to establish and operate a Title V program within the State of Utah.

B. Develop a grant disclosing Utah's proposed method to implement Title V Senior Community Service Employment Program and serve in the capacity of project sponsor.

C. Take the leading role in the coordination of statewide activity with other national sponsors (i.e., Green Thumb and Forest Service).

D. Develop an annual equitable distribution report with Green Thumb and Forest Service.

E. Select eligible organizations and develop subproject contracts or agreements with said agencies in order to implement the Title V program for a project year.

F. Annually monitor and assure case file compliance and fiscal accountability.

G. Provide quarterly reports to the Department of Labor on progress toward statewide grant objectives.

H. Complete an annual close-out report for the Department of Labor and any other relevant report or informational request.

I. Assure to the extent feasible that the Title V statewide program enroll minorities and limited English-speaking eligible individuals in proportion to their number in the State.

J. Enforce federal Laws and regulations relevant to this program.

K. Cooperate with agencies providing services to elderly persons and with agencies providing employment and training services, including activities conducted under the Job Training Partnership Act.

L. Select subproject sponsor and host agencies to provide a variety of community service opportunities for enrollees, and produce a variety of services which respond to the community's total needs.

M. Continue pre-existing coordinating relationships with Area Agencies on Aging, and work with State employment security agencies.

N. Disseminate relevant program information to subproject sponsors and provide technical assistance when needed or upon request.

R510-107-4. Recruitment and Selection of Enrollee.

4.1 Each subproject sponsor shall use methods of recruitment and selection which will assure that the maximum number of eligible individuals have an opportunity to participate in the project. Recruitment efforts shall be designed to assure equitable participation of minority groups and limited English-speaking eligible individuals.

4.2 To facilitate recruitment activities, subproject sponsor shall develop a fact sheet. In addition to promoting recruitment, the fact sheet can also include the following information:

A. Provide information to the public and the potential employers about the goals of the program and how it operates.

B. Seek the cooperation of prospective employers to expand employment opportunities for older workers in both the private and public sectors.

C. Increase public awareness of the needs of the older workers and the contributions they make to local communities and economies.

4.3 The subproject sponsor shall assure participants fair, equitable treatment and access to the Title V Program. The following methods shall be considered by a subproject sponsor when activating recruitment procedures for an enrollee slot:

A. Contacting the local State Job Service offices, Area Agencies on Aging, Social Security offices, JPTA sponsors, AARP program.

B. Utilization of mass media (newspapers, radio, and television for free public service announcements) including local bi-lingual media, newspapers, and other community resources.

C. Have announcements made by civic, labor, religious, business organizations, organizations of older people, and agencies serving older people; and

D. Arrange for the display of posters announcing the availability of Title V Senior Community Service Employment Program in public buildings, business places, senior centers, nutrition project sites, and in other places where these will be seen by older people.

R510-107-5. Eligibility Determination.

5.1 Subproject sponsors shall be responsible for assuring and documenting the eligibility of all applicants for participation in the program in accordance with the following criteria:

A. Age: Prior to the date of actual enrollment for participation in the program, the individual must have reached 55 years of age or older. Priority will be given to those individuals who are 60 years of age and older. There is no maximum age limitation and no person shall be determined ineligible solely because of advanced age.

B. Residency: The individual must live in Utah. There is no length of residency required except that the person live in the state during the time of participation in the program.

C. Income: The income of an individual or of the family of which the individual is a member shall not exceed the low income standards defined by U.S. Department of Health and Human Services (which are periodically up-dated) and shall be applied to:

1. Each individual seeking initial enrollment.

2. Each individual seeking reenrollment after termination from SCSEP.

3. Each enrollee seeking certification for continued enrollment.

D. Family (for the purpose of determining income): Is defined as one or more persons living in a single residence who are related to each other by blood, marriage, or adoption. A step-child or step-parent shall be considered to be related by marriage. Anyone claimed as a dependent on the applicant's Federal Income Tax return for the previous year shall be presumed to be part of the applicant's family for the current year unless otherwise demonstrated. Except as provided above, an individual 18 years or older who receives less than 50% of his/her support from the family, and who is not the principal earner or the spouse of the principal earner, shall not be considered as a member of the family.

E. Inclusions to income: For purposes of determining wages or salary the total gross earnings received for work performed as an employee. Use the amount paid before deductions for income taxes, social security, bond purchases, union dues, etc. Wages and salaries received for by individuals through public service employment and on-the-job training under JTPA are to be counted as income.

1. If an applicant, or an enrollee who is being recertified, has other family members who are currently enrolled in SCSEP, the SCSEP earning of the other family member(s) must be included as income.

2. Self-employment income: Net money income (gross receipts minus operating expenses) from a business firm, farm or other enterprise in which a person is engaged on his or her own account must be counted.

3. Other income: Net money income (gross receipts minus operating expenses) received from such other sources as net rents, Social Security benefits, pensions, alimony, military retirement pay, periodic income from insurance policy annuities that is not for a fixed term and other cash income not specifically excluded below must be counted.

5.2 Exclusions from income: The following types of income shall not be counted for the purpose of determining annual family income for SCSEP:

A. Non-cash income: Such as food stamps and compensation received in the form of food, housing, or other non-cash compensation or gifts.

B. Public assistance payments: Includes all types of local, state, or federal cash welfare such as AFDC, SSI, and disability payments from Social Security and Black Lung programs.

C. Employment programs: Payments made to participants

in employment and training programs such as allowance payments for classroom training, transportation, and dependents allowances, wages for work experience, wages earned under SCSEP by the applicant or person being recertified, and stipends earned from programs such as Foster Grandparents. (Wages earned under OJT and PSE employment programs are countable).

D. Recertification/reenrollment: For persons who are being recertified for continued enrollment, or those persons applying for reenrollment whose previous termination was due to illness or acceptance of unsubsidized employment, five hundred dollars ($500) of otherwise includable income shall be excluded from the individual's family income.

E. Capital gains or losses.

F. Federal, state, or local employment benefits.

G. One-time unearned income: Such as the following examples: Payments received for a limited fixed term under income maintenance programs and supplemental unemployment benefit plans; one-time or fixed term scholarship and fellowship grants; accident, health and casualty insurance proceeds; disability and death payments, including fixed term (but not life time) life insurance annuities and death benefits; one-time awards and gifts; inheritance, including fixed term annuities; fixed term worker's compensation awards; terminal leave payments; soil bank and other agriculture crop stabilization payments.

H. Payments for child support.

I. Veteran's compensation payments: All benefit payments to veterans except military retirement pay shall be excluded for SCSEP income eligibility purposes.

J. Interest income.

K. Foster grandparent and senior companion stipends.

This list is not intended to be all inclusive, but is intended to provide the conceptual framework of one-time unearned income.

5.3 Computation: For all persons who are applying for an enrollment for the first time or re-applying for enrollment, and for currently enrollees who are being recertified:

A. The income eligibility shall be computed by either taking their countable family income during the preceding 6 months and annualizing it (multiply by 2) or by taking the total includable income for the past 12 months. The method used of these two shall be the one that results in the lower annual family income.

B. The figure arrived at by the above process is then entered on the eligibility certification form, which is then compared to the poverty levels to determine if the individual meets the income eligibility criteria.

5.4 If a person is found to be ineligible:

A. Through providing false information at the time of interview or recertification, the person shall be terminated immediately.

B. Through no fault of his/her own, such as income increasing to a level higher than the maximum allowable or inability of the Program Coordinator to find constructive and productive work for the person's capability, or because of a error on the part of the interviewer, the individual shall be given 30 days notice before termination in writing. To the extent possible, such individuals shall also be provided assistance to obtain other employment.

C. Persons found ineligible shall be informed of their appeal rights in accordance with the local subproject sponsor grievance procedures. If they are enrolled at the time of determination, a termination form must be completed and inserted in their file.

Subproject sponsors shall not impose any additional condition or requirement for enrollment eligibility. Also, all intake information should be obtained by personal interviews and verified by the dated signature of the interviewer and the applicant.

R510-107-6. Selection/Enrollment Priorities.

In selecting individuals from the eligible applicants for actual enrollment to fill available vacancies, the subproject sponsor shall apply the following priorities:

A. First priority: Subproject sponsors that have temporary enrollees shall give them first consideration for permanent enrollment.

B. Second priority: shall be given to those individuals who are 60 years of age or older.

C. Third priority: shall be given to individuals who are applying for reenrollment whose termination was due to extended illness or placement into unsubsidized employment.

D. Fourth priority: shall be given to the remaining applicants according to economic need.

R510-107-7. Physical Examinations.

7.1 The physical exam is a benefit of the program, not an eligibility requirement.

7.2 Subproject sponsors shall insure that each enrollee receives a physical examination or signs a written waiver of the exam prior to enrollment on the program. No applicant shall be paid wages for any activity prior to receiving a physical exam or signing a waiver.

7.3 The purpose of the examination is to determine the type of work the individual can do. The physical may be received up to 30 days prior to application for participation in the program. Physical received prior to application shall not be paid for with program funds. If the subproject sponsor is unable to find or to develop an employment opportunity for the person within his/her physical capability, the individual shall be informed and a written and signed statement detailing the situation shall be completed by the subproject sponsor and attached to the intake form. The applicant adversely affected shall be informed and assisted to exercise all of his /her due process appeal rights.

7.4 Each temporary and permanent enrollee shall be provided with a physical examination at least once every 12 months to determine his/her capability to continue in his/her current job assignment unless the individual voluntarily declines to take the physical and signs a waiver to that effect.

7.5 Subproject sponsors shall make all efforts to obtain physical examinations at reduced rate or at no cost from local health departments, clinics, hospitals or other sources. Where no other sources exist, the physical examinations will be paid for from program funds. The cost allowed for physical examinations shall be in accordance with prevailing local rates. Except for physicals received prior to application, the applicant/enrollee

may not be required to pay for the physical examination themselves.

7.6 All physical examinations must be completed by the examining physician and a copy of all exams and waivers must be retained by the subproject sponsor and placed in the enrollee's personnel file. The original of the exam form or waiver is to be maintain within the enrollee's personnel file for documentation and accountability purposes.

R510-107-8. Waiting List.

8.1 If applications are received when all slots are filled, the subproject sponsor shall retain the intake form for review when vacancies exist.

R510-107-9. Types of Appointment.

9.1 Permanent enrollees shall be all those enrollees enrolled up to the number of authorized slots as designated in the contract.

9.2 Temporary enrollees shall be all those enrollees over the number of authorized slots.

R510-107-10. Orientation.

10.1 Each enrollee who is accepted for enrollment will receive orientation training as soon as practical prior to or after actually starting work at a host agency. Such orientation is designed to inform the enrollee of the purpose and goals of the program, to explain the benefits and services available, to discuss job placement goals, and to explain the participants' rights and responsibilities as an enrollee of the program. Topics to be discussed shall include, but not necessarily be limited to:

A. Hours of work.

B. Safe working habits.

C. Fringe benefits.

D. Host agency philosophy.

E. Unsubsidized placement policy.

F. Enrollee responsibilities.

G. State agency responsibility.

H. Host agency responsibility.

I. Grievance procedures.

J. Supportive services.

K. Code of conduct and ethics.

L. Standards of performance.

10.2. Time spent by enrollees in orientation and pre-job training shall be considered as enrollment for which they shall receive pay.

R510-107-11. Enrollee Policy.

11.1 Enrollee wages: Enrollees are to be provided an hourly amount that correspond to the highest of:

A. The federal minimum wage.

B. The state minimum wage.

C. The prevailing local wage for the type of work the enrollee is engaged in, if funding is available.

11.2 Hours of work:

A. Enrollees are not to be paid for more than 1300 hours during a twelve month period. This includes pay from the program for any purpose such as: orientation, training, sick leave, annual leave, holiday pay, etc. If an enrollee is transferred from another Title V SCSEP sponsor, the hours worked for the previous sponsor shall be carried over and counted toward the enrollee's 1300 hour limit for the current year.

B. A work schedule shall be established for each enrollee and maintained on file at the local project site office. Project sponsors shall attempt to ensure that enrollees work during normal business hours.

C. A project sponsor shall not offer an enrollee an average of fewer than 20 hours of paid participation per week; however, shorter periods may be authorized by written agreement between an enrollee and a project sponsor.

D. A subproject sponsor shall not require an enrollee to participate more than 20 hours during one week.

11.3 Duration of enrollment: There shall be no time limited placed on any permanent enrollee's participation in the program. Time limits may be placed on the participation of a temporary enrollee. However, such limitations are to be made a part of the enrollee's official file at the time of employment.

11.4 Enrollee fringe benefits: Project sponsors shall ensure that enrollees receive all Fringe Benefits required by law.

A. Fringe Benefits shall be administered uniformly to all permanent and temporary enrollees. All enrollees must be provided with the following:

1. Worker's compensation.

2. F.I.C.A. tax payments.

3. Unemployment Insurance.

B. Additional fringe benefits may be provided for enrollees in accordance with the practice of the subproject sponsor for its own employees:

1. Annual leave.

2. Sick Leave.

3. Holiday pay.

11.5 Enrollee transportation.

A. Subproject sponsors are authorized to provide payment for transportation only when such travel is performed by the enrollees in the direct performance of their employment related activities. Payment with project funds for travel to and from home and work is to be authorized only in hardship cases as determined by the subproject sponsors.

B. Whenever possible, payment for work related travel shall be obtained from the host agency or other local resources.

C. When transportation is paid with project funds, the travel shall be documented and the records shall include the purpose of the trip(s), odometer reading (if required by the agency policy), and the location(s) travel from and to.

D. Reimbursement for travel shall not exceed the current federal mileage rate for personal automobile usage.

E. Enrollees utilizing their private vehicle in the performance of assigned duties must show proof of liability insurance coverage required by state law.

F. Records containing the name of the insurer, the coverage limits, and the expiration date shall be maintained for all enrollees who receive payment for travel costs.

G. If an enrollee's job requires driving a vehicle owned by the Host Agency, the owner shall assume full responsibility for the liability and injury insurance coverage.

11.6 Host agency selection: SCSEP work sites may be developed with any organization that meets the following criteria:

A. The agency must be either:

1. A public agency - this is any organization or entity that is established by authorization of local, state, or federal statute, law or executive order.

2. A non-profit organization - that has a 501(c)3 tax exempt status from the Internal Revenue Service.

B. The activity the enrollees are involved in must be open to the general public without regard to language, race, religion, political or handicapped status.

C. Each Host Agency shall be provided with information concerning the SCSEP program that includes the following:

1. The kind of supervision expected from the agency.

2. The responsibility the agency has to assist the enrollee to obtain unsubsidized employment.

3. The in-kind (non-federal contribution) requirements (if applicable).

4. The responsibility of the agency to provide a safe working environment.

5. Department of Labor's enrollee policies relating to hours of work, pay, fringe benefits, accident reporting, performance standards, EEO Affirmative Action policies, etc.

11.7 Subproject sponsors shall have no inherent right to any positions and Utah State Division of Aging and Adult Services reserves the right to reassign enrollees and/or position as the needs of the enrollees, community (equitable distribution), and state of Utah dictate.

11.8 Assessment:

A. After an applicant has been accepted for enrollment the program coordinator shall conduct an assessment of the individual's capabilities and interests to determine a suitable work assignment that will eventually lead to the placement of the enrollee into unsubsidized employment. In making the assessment, the following items shall be taken into consideration:

1. The information provided on:

a. the intake form,

b. the physical examination,

c. the self evaluation form,

d. the employability plan.

2. The individual's interests and job preferences.

3. The person's work history.

4. The geographical location the enrollee can reasonably commute to.

B. The assessment must be documented and recorded in the enrollee's file.

11.9 Pre-placement training

A. When it is necessary to prepare the enrollee for an assignment, pre-placement training may be provided by the program coordinator. Such training may be conducted in any manner that is appropriate to the enrollee's needs, and although the training may be paid for with grant funds, the program coordinator should make all possible attempts to obtain the training at no cost or reduce cost through local resources.

B. Time spent by enrollees in training shall be considered enrollment and the enrollees shall be paid at the state or federal minimum wage whichever is highest or the prevailing rate of the job position.

C. Pre-placement training and orientation combined shall not exceed a total of 80 hours per individual enrollee and should be conducted in the first 2 weeks unless extended periods are authorized by the State Office.

11.10 Enrollee work assignment

A. As soon as possible after enrollment, orientation, assessment and pre-placement training, each enrollee shall be placed in a community service placement. This job shall be developed in consultation with a Host Agency and shall meet the following criteria:

1. Must contribute to the improvement and general welfare of the community.

2. Must result in an increase in employment opportunities over those which would otherwise be available.

3. Must not result in the displacement of currently employed enrollees or fill positions of persons on layoff, including partial displacement such as a reduction in hours of non-overtime work, wages or employment benefits.

4. Shall not impair existing contracts for service or result in the substitution of federal funds for other funds in connection with work that would otherwise be performed.

5. Shall not substitute project jobs for existing federally assisted jobs.

6. Shall provide good public recognition for the enrollee's skills and abilities.

7. Shall serve as many people as possible.

8. Shall provide opportunities for learning new skills.

9. Shall have a positive impact on community self image.

10. Shall create new community services or expand existing services.

11. Shall provide an opportunity for unsubsidized placement after a reasonable amount of time.

11.11 Special limitations which apply to all SCSEP work assignments

A. Enrollees shall not be assigned to projects involved in the construction and building of highways and other projects which inures primarily to the benefit of private profit making organizations.

B. Enrollees shall not be involved in projects connected with construction, repair, painting, rehabilitation, operation or maintenance of any facility used, or to be used as, a place of sectarian religious worship or instruction.

C. No project or activity in SCSEP shall involve partisan political activities, and enrollees, project employees, or funds shall not be used for any activities under this section.

D. No SCSEP funds shall be expended directly or indirectly for the purchase, erection or repair of any building except for:

1. Minor remodeling of a public building necessary to make it suitable for use by project administrators.

2. Minor repair and rehabilitation of private residences performed in conjunction with local public housing programs intended to benefit low-income families or individuals.

3. Minor repair and rehabilitation of publicly used facilities performed to beautify, improve, or restore the facilities for the general betterment of the community.

11.12 Monitoring and supervision

A. Subproject sponsor shall provide all administrative supervision functions which includes:

1. Hiring.

2. Disciplinary action.

3. Setting wages.

4. Fringe benefit policies.

B. Host agencies shall be required to provide the supervision necessary for safe, productive and effective work.

C. To ensure that the program objectives are being met, the subproject sponsor shall monitor each project on-site at least once a quarter.

11.13 Safety

A. No enrollee shall be permitted to work in building or surroundings under working conditions which are unsanitary, hazardous or dangerous to his/her health or safety or which are contrary to federal and state occupational health and safety administration laws and regulations.

B. No enrollee shall be permitted to continue or begin work on premises that have been restricted under official occupational safety and health regulations and/or under regulation promulgated under the Clean Water Acts and the Consumer Production Program. This point shall be agreed to with any prospective host agency prior to assignment of enrollees to a work site.

11.14 Enrollee training

A. Training shall be provided to enrollees during their enrollment on the program to develop self confidence, to teach new job skills, to update old skills and to motivate enrollees to seek and obtain employment in the regular competitive job market.

B. Subproject sponsors shall, whenever possible, obtain training services through locally available resources at no cost or reduced cost to the program.

C. Time spent by enrollees in training shall be considered a part of the enrollment time, and the individual shall be paid at his/her established rate of pay. Such payment for participation in training shall not exceed 260 hours during a program year.

11.15 Unsubsidized placement

A. Subproject sponsors are required to place 20% of their allotted slots into unsubsidized employment each grant year.

B. Unsubsidized employment may be with either public or private employers, and includes any job that is not directly subsidized by a federal employment program such as JTPA, etc.

C. All orientation, work experience, training, counseling, etc., given to enrollees during their participation in the program should be aimed at achieving the final goal of unsubsidized employment. Subproject sponsors are encouraged to engage in a wide spectrum of activities designed to achieve the transition of enrollees to unsubsidized employment.

D. After an enrollee is placed into an unsubsidized job, subproject sponsors shall follow-up on the progress of the individual in their new job sometime between 30 and 90 days after termination from the program. If the enrollee is unable to continue in the job, he/she is eligible to return to SCSEP employment on a priority basis.

E. All unsubsidized placements shall be documented on the termination form and subproject sponsors shall maintain records of the follow-ups completed for placed enrollees.

11.16 Supportive services

A. When needed by an enrollee for successful participation in the program, supportive services may be provided by the subproject sponsors. Such services may be paid for with the project funds if other resources are not available. Supportive services for enrollees may include but are not limited to:

1. Referral to appropriate public agencies to address problems of the enrollee or her/his family.

2. Incidental needs for the job assignment such as safety clothing, work clothing, eyeglasses, etc.

3. Preparation of resumes for job search activities.

4. Transportation to service agencies.

11.17 Termination procedures

A. The participation of an enrollee in the program may be terminated for the following reasons:

1. Placement into employment;

2. Voluntary resignation by the enrollee;

3. Failure to continue to meet the eligibility requirements;

4. Extended illness;

5. Transfer to another SCSEP project; and,

6. Misconduct which may include any of the following but is not limited to:

a. gross negligence, physical violence, and other disorderly or disgraceful conduct;

b. theft and/or fraud;

c. repeated and unjustifiable tardiness and absenteeism;

d. misuse of annual or sick leave;

e. giving false statements on application or recertification forms;

f. falsifying reports, e.g. time sheets, travel vouchers, etc.;

g. violation of safety rules;

h. ineffectiveness, demonstrated inability or incompetence to carry out duties of assigned job;

i. refusal to obey legitimate instructions of a supervisor;

j. reporting to work under the influence of intoxicating beverages or habit forming drugs or the use of such on the work site;

k. sleeping during working hours; and,

l. refusal to attend an unsubsidized job interview without just cause.

B. In cases where an enrollee is terminated because of misconduct, the subproject sponsor must inform the enrollee of his/her right to file a grievance. Use the due process procedures spelled out in your local agency. Whenever an enrollee is terminated for any reason, a termination notice must be completed and maintained in the enrollee file for state review.

R510-107-12. Program Files.

A. Each enrollee shall have an individual personnel file which shall contain the following information:

1. Intake form.

2. Documentation of eligibility.

3. Physical examinations and/or waivers.

4. Assessment/employability forms.

5. W-4 forms.

6. Recertification forms.

7. Job descriptions.

8. Termination documents.

9. Correspondence and other documents pertaining to the individual enrollee.

10. Certification of income.

11. Staff Training Record.

12. Leave Records.

13. Sign time and attendance reports.

14. Title V Statement of Understanding - signed or

temporary enrollment agreement (when applicable).

B. Subproject sponsors files, which shall contain:

1. Subproject sponsor and host agency agreements.

2. Documentation of 501(c)3 tax status if appropriate.

3. Copies of monitoring reports related to the agency.

C. Other documents, correspondence, and material, such as monitoring reports pertaining to program operations.

D. The program files are to be retained five years after an enrollee or host agency has been terminated from the program.

R510-107-13. Quarterly Progress Report.

13.1 Subproject sponsors must submit a "Quarterly Progress Report" to the state agency office at the end of each quarter of the calendar year.

13.2 The Quarterly Progress Report is due to the state agency office by the 15th working day after the end of the quarter.

R510-107-14. Private Sector Experimental Demonstration Project.

14.1 Under the Private Sector Experimental Demonstration Project, the subproject sponsor can develop on-the-job training arrangements with businesses in the private sector. The basic purpose of the project is to provide an opportunity for older workers to enter the private job market on a trial basis and demonstrate their value to employers.

14.2 The employer must operate a business in the private sector and must have an actual job opening to place the older worker in if the trial period is successful. A written agreement must be made between the subproject sponsor and the employer before any enrollee is assigned to work at the business. Priority will be placed with small and minority owned businesses.

14.3 The work can be for any number of hours per week, up to 40 hours; it can be for a period of up to 6 weeks. During the project period, the subproject sponsor will pay wages and benefits as specified in the agreement.

14.4 It is expected that if the older worker completes the trial period agreement without problems being expressed by the employer, the employer will offer the position to the enrollee on a permanent basis. If it becomes obvious to the employer during the trial period that the enrollee will not be able to satisfactorily perform the job, the subproject sponsor will either provide additional enrollees for the employer to choose from or if the employer so desires, the subproject sponsor will simply cancel the agreement.

14.5 Upon cancellation of the agreement at anytime, there will be no obligation to the employer except that the subproject sponsor shall not place additional positions with the employer.

14.6 All enrollees placed in the demonstration program must meet all the eligibility requirements for Title V. An enrollee already on the program can be transferred to the position with no additional paperwork except that the agreement and notification is placed in the enrollee file for documentation purposes acknowledging job change assignment.

R510-107-15. Non-Federal and State Status of Enrollees.

15.1 Enrollees who are employed in any project funded under the Older Americans Act are not federal or state employees as a result of such employment.

R510-107-16. Temporary Positions.

16.1 Where a portion of project funds is not being used as planned in the contract agreement, the project sponsor may use those funds during the period of the agreement to enroll additional eligible individuals in temporary positions. The number of temporary positions may not exceed 20 percent of the total number of authorized positions established under the agreement without the written approval of the Department of Labor. Payments to or on behalf of enrollees in temporary positions shall not exceed the amount of the unused funds available. Each individual enrolled in a temporary position shall be informed in writing that the employment is of a temporary nature and may be terminated. Project sponsors first shall seek to maintain full enrollment in authorized positions and shall seek to schedule all enrollments and terminations to avoid excessive terminations at the end of the project period.

R510-107-17. Maintenance of Effort.

17.1 Employment of enrollees funded under the Older Americans Act (Act) shall be only in addition to employment which would otherwise be funded by the subproject sponsor, and the host agencies without assistance under the Act.

17.2 Projects funded under the Act:

A. Shall result in an increase in employment opportunities in addition to those which would otherwise be available;

B. Shall not result in the displacement of currently employed workers, including partial displacement such as a reduction in hours of non-overtime work, wages, or employment benefits;

C. Shall not impair existing contracts for service or result in the substitution of federal funds for other funds in connection with work that would otherwise be performed;

D. Shall not substitute project jobs for existing federally-assisted jobs; and

E. Shall not employ or continue to employ any enrollee to perform work which is the same or substantially the same as that performed by any other person who is on layoff.

KEY: elderly, employment
1988 62A-3-104
Notice of Continuation January 8, 1998

R510. Human Services, Aging and Adult Services.
R510-108. Definition of Rural for Title III: Grants for State and Community Programs on Aging Reporting Under the Older Americans Act.
R510-108-1. Definition.

For the purpose of reporting for Title III of the (OAA), rural shall be defined as any county having a total population of less than 100 persons per square mile. This means that all counties in Utah will be considered rural for Title III reporting except Davis, Salt Lake, Utah, and Weber Counties.

KEY: elderly, rural policy
1988 62A-3-104
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R510. Human Services, Aging and Adult Services.
R510-109. Definition of Significant Population of Older Native Americans.
R510-109-1. Definition.

A Planning and Service Area has a "significant population of older Native Americans" when 50% or more of its 60+ minority population is older Native Americans.

KEY: elderly, native american, population
1989 62A-3-104
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R510. Human Services, Aging and Adult Services.
R510-110. Policy Regarding Contractual Involvements of Area Agencies on Aging for Private Eldercare and Case Management Services.
R510-110-1. Definitions.

A. Eldercare: a service provided by a corporation on behalf of its employees who have caregiver responsibilities for elderly relatives. The service includes information and referral, but may extend to other types of services and programs, as determined by the corporation.

B. Case Management: a service with several components which collectively make up case management. These components include a combination of some or all of the following:

(1) Intake and Screening: an initial contact with the AAA from the company requesting case management services.

(2) Assessment: a face-to-face evaluation utilizing a standardized Division assessment tool. The assessment provides some or all of the following information regarding the individual:

(a) functional level, including ADL and IADL status;
(b) cognitive status;
(c) health status;
(d) current living arrangement; and
(e) use of formal and informal support systems.

(3) Care Planning: a determination of the appropriate and available mix of formal and informal services and support systems required to meet the individual's long-term care needs. A care plan is then developed.

(4) Care Plan Implementation: assessment and coordination of the appropriate services. It also includes assisting the individual to make the necessary financial arrangements as required.

(5) Continued Care Management: monitoring, reassessment, and termination components of case management. More specifically this includes:

(a) monitoring the service delivery, quality of care provided, and status of the individual;

(b) reassessing the individual's cognitive status, health status, and functional level as they relate to the care provided, and making appropriate changes as needed; and

(c) closing the case once an individual no longer requires or is eligible for case management.

C. Entrepreneurial Activities of AAAs include the manufacturing, processing, selling, offering for sale, rental, leasing, delivering, dispersal or advertising of goods or services.

R510-110-2. Purpose.

A. A basic mission of AAAs under the (OAA) is to foster the development of comprehensive and coordinated systems of services for all older persons. Activities such as eldercare and case management and other entrepreneurial endeavors, which are intended to enhance the scope and quality of the system of services available to older persons in a Planning and Service Area (PSA), are consistent with the purpose of an AAA. As a result, the Division encourages the Utah AAAs to engage in appropriate relations with private corporations in the development and implementation of eldercare programs, case management, and related activities. Utah AAAs may engage in these activities provided that those activities conform to the provision of this policy issuance.

B. The Division recognizes that an AAA, in lieu of a direct contract with a corporation, insurance company, or brokering organization may elect to provide the services directly or to join with other AAAs in those contracts. These arrangements are permissible, provided that the provisions of this policy are followed.

R510-110-3. General Provisions.

A. An AAA which engages in corporate eldercare and private case management services:

(1) shall assure that its statutory duties are maintained as prescribed in the OAA, Title III: Grants for State and Community Programs on Aging, as amended, to focus on the needs of older persons in greatest need, with particular attention to low-income minority persons; and to engage only in activities which are consistent with its statutory mission as prescribed in the OAA as amended, related federal rules and regulations, and related state policy;

(2) shall assure that activities specified under the Area plan and subsequent amendments, as approved by the Division, will not be reduced as a result of activities engaged in under this policy;

(3) shall not use Title III, Title XIX, SSBG or state funds to supplement third-party payments made by a corporation under a contract covered by this policy;

(4) shall assure that any third-party payment under a private contract fully covers the cost of services provided, including administrative and overhead costs, unless a public/private partnership is established whereby the state or federal governments or other funding source agrees to subsidize the costs of private case management or older care;

(5) shall account for private corporate contract revenues and expenditures separately from federal and state funds awarded under the Area Plan contract;

(6) shall include in their Area Plan on Aging and amendments thereto an explanation describing their relationships with private corporations and services rendered to older persons as a consequence of those agreements or contracts. These AAAs, as part of their Area Plans, shall also sign a statement of assurance of compliance with the provisions of this policy.

B. The provision of IVA(2), above, does not constrain the

AAA from utilizing OAA Title III Part B: Supportive Services and Senior Centers funds to develop new resources and coordinate services to develop corporate eldercare and private case management services systems in its PSA. This complies with the statutory mission of AAAs of fostering the development of comprehensive and coordinated systems of services for all older persons, which includes all types of services and resources, both public and private, which are available to serve older persons.

C. AAA offices may engage in entrepreneurial activities if this is in response to a demonstrated need and the funds raised by these activities are used for the following purposes:

(1) to further extend services and opportunities for senior citizens, or

(2) to initiate services and opportunities for seniors, provided that these services or opportunities are compatible with the AAA functions and goals.

R510-110-4. Requirements for Contracts Between AAAs and Corporations, Insurance Companies, and Related Organizations.

A. General Provisions:

(1) An AAA cannot execute an agreement or contract that demands exclusivity; an AAA must be free to negotiate other similar agreements or contracts with other companies.

(2) An AAA cannot enter into an agreement or contract that obligates it to be identified with or to promote the company or its products or places it in a conflict of interest with its public mission.

(3) A contract must state that the AAA has the right to refuse services to a company or its employees or clients in the event that there is a potential conflict of interest for the AAA, as identified by the AAA or the Division.

(4) A contract must provide that an AAA has the right to reveal its findings, plans, and recommendations to the client, regardless of the company's final decision regarding client eligibility and services provided.

(5) A contract must provide that all information as to personal facts and circumstances obtained by the AAA shall be treated as privileged communications, shall be held confidential and shall not be divulged without the written consent of the individual receiving the services, his attorney, or his legal guardian, except as is required by the corporation, insurance company, or brokering organization, or as may be required by the Division for the purposes of monitoring for compliance with the provisions of this policy, or as directed by the court. However, nothing prohibits the disclosure of information in summary, statistical, or other form which does not identify particular individuals.

(6) A contract must hold the AAA and the Division, where it is a party to the contract, harmless and defend them in any actions brought against them on the basis of companies' policies or decisions regarding benefits and services.

(7) Provisions of the contract may not require the withholding of information or otherwise limit the ability of the AAA to judge or act in the public interest; or restrict the ability of the Division to exercise appropriate oversight of the AAA in its fulfillment of its public mission and responsibilities.

B. Specific Provisions Regarding Long-Term Care Insurance Case Management Contracts: In contracts covering long-term care insurance case management services, companies must assure that:

(1) they are financially stable, are in good standing, and are in compliance with all statutes and rules governing insurance companies in the state of Utah;

(2) their long-term care insurance policies comply with the Utah insurance laws.

R510-110-5. Monitoring by the State Division of Aging and Adult Services.

the Division through its program monitoring activities, including financial audits, shall periodically assess AAA compliance through the following actions:

A. Review and approval of the AAA Area Plan and amendments, to be done annually and more frequently for modifications as submitted. The Division office will review:

(1) explanation describing AAA relationship with private corporations;

(2) signed statement of assurance of compliance with this policy; and

(3) related data in program and service costs in Area Plan.

B. Annual review of financial audits. The Division will review:

(1) adequacy of AAA financial control system;

(2) adequacy of AAA financial system to maintain separate accounting for different funds, including private contracts; and

(3) adequacy of AAA support documents to justify costs to each funding source.

C. Field visits and assessments of AAA activities: the Division monitoring and assessment will include a review for compliance with policy contained herein, including contract requirements.

D. When a finding shows the AAA to be out of compliance with the provisions of this policy or contract requirements, the Division may impose one or more of the following: 1) corrective actions; 2) special conditions included in the Division/AAA Contract; 3) withhold funds; 4) withhold or deny approval of the Area Plan. Process for appeal of these actions is outlined in Section 63-56-45 to 63-56-64, Utah Procurement Code.

KEY: eldercare
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R510. Human Services, Aging and Adult Services.
R510-200. Long-Term Care Ombudsman Program Policy.
R510-200-1. Purpose.

A. The Long-term Care Ombudsman (LTCO) Program is created for the purpose of promoting, advocating, and ensuring the adequacy of care received, and the quality of life experienced by elderly residents of long-term care facilities within the State.

B. Operation of the LTCO Program is a joint responsibility of the Division and local AAAs. Authority to administer the LTCO Program is derived from the Older

Americans Act (OAA) Title VII: Allotments for Vulnerable Elder Rights Protection Activities and Section 62a-3-201 et seq.

C. The Division will establish a State Office of LTCO.

D. The State LTCO is responsible for:

(1) oversight of the statewide LTCO program;

(2) providing training to local LTCO staff and volunteers;

(3) provision of public information regarding the LTCO program;

(4) working with federal agencies, the State Legislature, other units of state government and other agencies to obtain funding and other resources;

(5) developing cooperative relationships among agencies involved in long-term care;

(6) resolving conflicts among agencies regarding long-term care;

(7) assuring consistent, statewide reporting of LTCO program activities:

(8) monitoring local LTCO programs;

(9) providing technical assistance to local LTCO programs;

(10) maintaining close communication and cooperation in the LTCO statewide network;

(11) recommending rules governing implementation of the LTCO program; and

(12) providing overall leadership for the Utah LTCO program.

E. AAAs are responsible for daily operation of the program, either directly or by contract, as defined in these rules.

F. The Division, State LTCO and AAAs must work together to protect elderly residents, promote quality care in residential facilities, and promote the LTCO program.

R510-200-2. Definitions.

A. "AAA" means area agency on aging as designated by the Division of Aging and Adult Services.

B. "APS" means adult protective services.

C. The Division means the Division of Aging and Adult Services within the Utah Department of Human Services.

D. "Elderly resident" means an adult 60 years of age or older who resides in a long-term care facility.

E. Long-term ombudsman is a person, operating within the guidelines of the Older American Act and the policies of the Division, who advocates for residents of long-term care facilities to ensure the quality and adequacy of care received.

F. "Local LTCO" means the local program and personnel designated by the Division, through each AAA, to implement the (LTCO) Program within a defined geographic area.

G. "State LTCO" means long-term care ombudsman personnel within the Division.

H. "Long-Term Care Facility" means any skilled nursing facility intermediate care facility, nursing home, residential care facility, adult foster care home, or any living arrangement in the community through which room and personal care services are provided for elderly residents.

R510-200-3. Local LTCO Program Administrative Standards.

A. AAAs shall operate the LTCO Program in accordance with the following standards:

(1) Supervision: All local LTCO shall have an identified supervisor. The person supervising the ombudsman shall meet all requirements for a supervisor as specified by the AAA and shall have at least a general knowledge of long-term care facilities.

B. Staffing: Each AAA shall recommend for certification one or more paid or volunteer staff members to serve as local LTCO.

(a) Persons assigned this responsibility shall have either education or experience in one or more of the following areas: gerontology, long-term care, health care, legal or human service programs, advocacy, complaint and dispute resolution, mediation or investigating.

(b) Assigned individuals shall be certified by the State LTCO within six months after assuming a local LTCO role.

B. The AAA shall have primary responsibility to provide for certified back-up to the local LTCO. AAAs may enter into cooperative agreements with other AAAs to provide for LTCO back-up. In emergency situations, AAAs may request back-up support from the State LTCO.

C. Local ombudsmen shall have no conflict of interest which would interfere with performing the function of this position, including:

(1) direct involvement in the licensing or certification of a long-term care facility or of a provider of a long-term care service;

(2) ownership or investment interest, represented by equity, debt, or other financial relationship in a long-term care facility or a long-term care service;

(3) employment by, or participation in the management of, a long-term care facility;

(4) receiving, or having the right to receive, directly or indirectly, remuneration in cash or in kind under a compensation arrangement with an owner or operator of a long-term care facility.

D. AAAs shall establish, and specify in writing, mechanisms to identify and remove conflicts of interest and to identify and eliminate relationships described in paragraph 3 including mechanisms such as:

(1) methods by which the AAA will examine individuals and immediate family members to identify conflicts; and

(2) actions the AAA will require individuals and family members to take in order to remove those conflicts.

E. Local LTCO shall have the ability to act in the best interests of residents of long-term care facilities, including taking public positions on policies or actions which affect residents. Local LTCO shall not be constrained by the local AAA or governing body from taking a stand in good-faith performance of their job.

(1) AAAs shall have on file a written description outlining the working relationship between the AAA and the ombudsman which spells out arrangements for assuring this ability.

(2) Grievance Procedure

(a) AAAs shall establish a grievance procedure to accept and hear complaints regarding an ombudsman's actions. The procedure shall allow for a final appeal to the Utah State Department of Human Services Office of Administrative Hearings.

(3) Records System

(a) AAAs shall maintain a records classification and retention program in accordance with Sections 63-2-301 and 63-2-901 and PL 89-73 42 USC 300-1 et seq.

R510-200-4. Local LTCO Classifications and Duties.

A. Ombudsman

An Ombudsman, who may be either a paid staff member or volunteer, may perform the following duties:

(1) investigate complaints and develop an action plan to resolve the complaint;

(2) provide supervision over the implementation of the action plan and any follow-up determined necessary;

(3) review complaints to set complaint response priorities;

(4) assign complaints to staff and volunteers;

(5) provide case consultation to long-term care facility staff; and

(6) perform duties of an assistant ombudsman.

B. Assistant Ombudsman

(1) An Assistant Ombudsman, who may be either a paid staff member or volunteer, may:

(a) provide outreach to residents, families, facilities, and other entities concerned about long-term care;

(b) observe actions and quality of care in long-term care facilities;

(c) perform complaint intake;

(d) provide residents, families, and the general public with information about the LTCO program and resident rights;

(e) provide public presentations;

(f) assist with resolution and follow-up on complaints while under the supervision of a Certified Ombudsman; and

(g) provide technical assistance to the general public and long-term care facility staff.

C. Ombudsman Program Director

(1) An Ombudsman Program Director, who may be the AAA director or his designee, may perform the duties of an Ombudsman, if certified as such, and shall:

(a) provide overall administration of the local ombudsman program;

(b) provide overall supervision of LTCO paid and volunteer staff;

(c) conduct quality assurance and complaint case record reviews;

(d) oversee the screening, hiring, and dismissal of LTCO staff and volunteers; and

(e) assess the need for regulatory changes to improve the quality of care and life for long-term care facility residents and advocate for the passage of those changes.

D. Non-certified Staff or Volunteers

Non-certified staff or volunteers may perform the following functions:

(a) complaint intake;

(b) provide public information and presentations regarding the LTCO program, long-term care in general, and other topics on which they may have expertise, as determined by the AAA;

(c) provide outreach to residents, families, facilities, and other entities concerned about long-term care;

(d) visit long-term care facilities and residents; and

(e) any other activity which does not expressly require certification and for which the AAA has determined the individual competent to engage in on behalf of the AAA or LTCO program.

R510-200-5. Certification Curriculum and Training Hours.

A. Assistant Ombudsman: Prior to applying for certification as an Assistant Ombudsman, an individual shall complete a minimum of 18 hours of required initial training and pass the post-test with a minimum score of 70%. This training shall cover the following areas:

(1) An introduction to the LTCO Program, including a discussion of the scope of work of the LTCO.

(2) An overview of the long-term care system, including a discussion of:

(a) the types of long-term care facilities and providers, their organization and operations;

(b) federal and state regulations applicable to long-term care facilities and providers, with an emphasis on resident rights;

(c) long-term care resident profiles and methods of payment for long-term care services;

(d) the aging process and attitudes of aging; and

(e) the Aging Network and the relationship between the AAAs, the State LTCO, and various regulatory agencies.

(3) Ombudsman skills, including:

(a) interpersonal communication, observation, and interviewing;

(b) building working relationships with providers; and

(c) complaint handling, with an emphasis on intake.

(4) An overview of complaint resolution skills, with an emphasis on advocacy, negotiating, empowering residents, and follow-up activities.

(5) LTCO Program policies and procedures, including:

(a) confidentiality;

(b) access to facilities and residents;

(c) complaint investigation and resolution;

(d) reporting; and

(e) ethics.

(6) Case record documentation.

(7) Mediation and negotiation between residents.

(8) Any additional topics deemed appropriate by the State LTCO in consultation with the Division, AAAs, long-term care regulatory agencies and local LTCO Program Directors.

B. Ombudsman: Prior to applying for certification as a local Ombudsman, an individual shall complete a minimum of 30 hours of required initial training and pass the post-test with a minimum score of 70%. This training shall include all training described in Section A plus an additional 12 hours of training covering the following areas:

(1) a more in-depth review of the content areas covered for candidates for certification as ombudsman representatives, including written exercises, case studies, role plays, research exercises, and analysis of systemic issues;

(2) development of a complaint resolution action plan;

(3) legal, administrative, and other remedies;

(4) actions regarding public disclosure of actions or inactions which affect residents of long-term care facilities, including appropriateness, confidentiality of certain information, and how to work with the media;

(5) review of client records;

(6) alternative dispute resolution options for use in complaint handling; and

(7) advocacy skills.

C. Post-tests: The post-tests referred to in Sections A and B shall be developed by the State LTCO and shall be structured in sections to correspond to major training topics. If an applicant does not receive a score of at least 70% on a post-test they shall be eligible to retake the test one time within 30 days. If they do not receive a minimum score of at least 70% on the retake test, they will need to complete the training pertaining to the test sections on which they did not receive a passing score. Upon completion, they will be allowed to take the test one additional time. If a passing score is not obtained, the applicant will be deemed by the State LTCO to not be appropriate for certification as an Assistant Ombudsman or Ombudsman.

D. Ongoing Training: To maintain certification, an assistant ombudsman must complete a minimum of 12 hours of training annually; an ombudsman must complete a minimum of 24 hours of training annually.

(1) The State LTCO will provide for at least 48 hours of LTCO specific training per year. Training shall be scheduled at various times throughout the year and in various locations throughout the State.

(2) During the first year in which a person functions as an assistant ombudsman or ombudsman the required initial training will count toward the annual training requirement;

(3) Relevant training offered in the community can serve to meet annual training requirements in lieu of state-sponsored LTCO training on an hour-for-hour basis. Documentation of attendance at a training, including a copy of the training agenda, shall be submitted to the State LTCO for approval.

R510-200-6. Registration and Certification of Ombudsmen and Assistant Ombudsmen.

A. Central Registry

(1) The State LTCO shall maintain a central registry of all local ombudsmen and assistant ombudsmen. The registry shall retain the following information on each:

(a) the ombudsman's or assistant ombudsman's name, address, and telephone number;

(b) a summary of the ombudsman's or assistant ombudsman's qualifications;

(c) the ombudsman's or assistant ombudsman's classification;

(d) the AAA with which the ombudsman or assistant ombudsman is associated;

(e) the most recent date of certification;

(f) a position description which contains any prohibitions applicable to the ombudsman or assistant ombudsman. Prohibitions may include limitation on the duties that may be performed, limitations on the providers the ombudsman or assistant ombudsman may investigate or attempt complaint resolution with, or any limitations due to a conflict of interest; and

(g) information pertaining to any decertification actions and the results of those actions.

(2) Local ombudsman and assistant ombudsman shall register with the State LTCO through the AAA within 30 days of accepting assignment as a local ombudsman or assistant ombudsman.

R510-200-7. Decertification of Ombudsmen and Assistant Ombudsmen.

Decertification of an ombudsman or assistant ombudsman may occur through voluntary resignation or decertification by the State LTCO or AAA or sponsoring agency which employs him. A person who has been decertified may not be assigned to ombudsman duties.

A. Involuntary Decertification With Cause:

(1) No ombudsman or assistant ombudsman shall be recommended for involuntary decertification without cause. Cause may include:

(a) failure to follow policies and procedures that conform to the LTCO statute and rules;

(b) performing a function not recognized or sanctioned by the LTCO Program;

(c) failure to meet the required qualifications for certification;

(d) failure to meet continuing education requirements;

(e) intentional failure to reveal a conflict of interest; or

(f) misrepresentation of the ombudsman's or assistant ombudsman's category of certification or the duties he is certified to perform.

(2) The State LTCO and AAAs shall establish, for their respective programs, policies and procedures for recommending decertification. Those policies and procedures shall require that the State LTCO or AAA attempt to help the LTCO or Assistant LTCO attain satisfactory job performance through professional development, supervision, or other remedial actions prior to recommending decertification.

(3) AAAs recommending decertification shall state their reasons in writing and shall provide any relevant documentation to support the recommendation to the State LTCO. Notice of the recommendation for decertification and the basis for the recommendation shall be provided to the local ombudsman or assistant ombudsman at the same time that information is submitted to the State LTCO.

(4) The State LTCO shall review the recommendation and provide written notification of his decision to the AAA and the local ombudsman or assistant ombudsman within ten working days. The AAA or local ombudsman or assistant ombudsman may appeal the State LTCO's decision in accordance with the Department of Human Services Rule R497-100.

(5) When the State LTCO initiates a decertification action against a local ombudsman or assistant ombudsman, the State LTCO shall provide written notification to the AAA and the local ombudsman or assistant ombudsman. The AAA or the local ombudsman or assistant ombudsman may appeal the decision in accordance with the Department of Human Services Rule R497-100.

(6) Upon completion of the decertification actions, the State LTCO shall record the actions and results in the central registry.

B. Voluntary Decertification Without Cause:

When a local ombudsman or assistant ombudsman voluntarily resigns due to personal reasons which would not otherwise affect certification, they shall surrender their LTCO identification card to the AAA. The AAA shall notify the State

LTCO of the voluntary decertification. The State LTCO shall record the date of voluntary decertification in the central registry.

C. Voluntary Decertification With Cause:

When a local ombudsman or assistant ombudsman voluntarily resigns for reasons which would otherwise warrant involuntary decertification, they shall surrender their LTCO identification card to the AAA within seven days. The AAA shall notify the State LTCO of the voluntary decertification with cause and shall notify the local ombudsman or assistant ombudsman of the right to a hearing. The State LTCO shall record the date of voluntary decertification in the central registry.

D. Recertification:

(1) A certified local ombudsman or assistant ombudsman who voluntarily requests decertification may apply to have his certification reinstated when he becomes reemployed or accepted as a LTCO staff or volunteer. Any person seeking recertification shall apply in writing, through the AAA, to the State LTCO. The application shall include the date of the most recent decertification action and a summary of any professional development in or experience with ombudsman skills, long-term care services, problem resolution skills or any related skills the applicant may have received since his decertification.

(2) The State LTCO shall review the application and may require the applicant to receive additional professional development, and take an appropriate examination based upon the length of time since the applicant's most recent certification, and the experience or professional development the applicant has accumulated in the interim. The State LTCO shall make notify both the AAA and the applicant of the decision within ten working days.

R510-200-8. Operation of the Long-Term Care Ombudsman Program.

A. Intake: The local LTCO Program shall accept and screen referrals from residents, family, facility staff, agency staff and the general community. Ombudsmen and assistant ombudsmen may also serve as the complainant for situations they have personally observed.

(1) If the information indicates that the referral relates to abuse, neglect, or exploitation of a resident, the local LTCO shall refer the complaint to either the local Adult Protective Services (APS) office or local law enforcement. The local LTCO and the APS worker should collaborate on investigating and resolving the complaint whenever possible.

(2) If the information indicates that the referral relates to facilities or operations licensed or certified by the Department of Health Bureau of Medicare/Medicaid Program Certification and Resident Assessment, and the nature of the complaint is other than alleged abuse, neglect or exploitation of a resident, the LTCO shall refer the complaint to the Department of Health. The local LTCO and Department of Health staff should collaborate on investigating and resolving the complaint whenever possible.

(3) Referrals to other agencies shall be made immediately if the situation appears life threatening or, in other situations, within two working days. If a referral is made to another agency, the local LTCO shall complete the intake form, indicating the referral date and entity, and maintain the form as part of the record. The local LTCO shall follow up to see that action was taken by the referral agency.

(4) If the referral involves a resident who is under the age of 60, and the nature of the complaint is limited to impact only on that resident, the local LTCO shall refer the complaint as specified in paragraph (1) or (2) of this section and take no further action. If the referral involves a resident who is under the age of 60 who resides in a facility that has other residents over the age of 60 and the nature of the complaint is such that it impacts those residents, the local LTCO shall refer the complaint as specified in paragraph (1) or (2) of this section as applicable and initiate an investigation.

(5) If the complaint involves residents rights or other issues within the jurisdiction of the LTCO, an investigation shall be initiated to determine if the complaint is valid. Issues within the purview of the LTCO include issues of privacy, confidentiality of information, and other issues relating to the action, inaction, or decisions by providers or representatives of providers of long-term care services, public agencies, or health and human service agencies that may adversely affect the health, safety, welfare, or rights of residents.

B. Investigations:

(1) LTCO investigations shall be initiated within three working days. If the available information indicates serious threat to a resident's life, health or property, the response shall be immediate.

(2) The investigation may involve phone or in-person contacts with the resident and complainant, collateral agency or individual contacts or an on-site investigation. The local LTCO shall:

(a) do a preliminary screening to gather facts and details of the complaint;

(b) categorize the complaint, i.e. resident rights, education, abuse, neglect, technical assistance, etc.;

(c) identify all parties to the complaint;

(d) identify relevant agencies, as required by state and federal statutes;

(e) identify steps already taken by the complainant;

(f) identify information gaps that may require additional research;

(g) determine if an on-site investigation is needed. If it is determined that an on-site investigation is not necessary, the LTCO shall document the reasons in the case file;

(h) determine if the situation is an emergency; and

(i) make verbal or written follow-up with the complainant.

(3) The method and extent of the investigation depends on the circumstances reported. The local LTCO shall complete an intake form on each referral. A complaint consists of the initial referral or any additional contacts regarding the initial referral received during the period that the case is opened. A referral regarding a different matter made during the period the case is opened is considered a new complaint. A referral received after a case is closed is considered a new complaint.

(4) When an on-site investigation is determined to be necessary the local LTCO does not have to give prior notice to the agency or facility in question. The local LTCO may choose to give notice if deemed appropriate. In either case, the ombudsman shall:

(a) upon arrival at the facility or agency, present official identification to the administration or designated person in charge;

(b) identify any factors that may interfere with the investigation;

(c) start the investigatory process to establish as clearly as possible what has happened, why it has happened, who or what is responsible for resolving the complaint, and possible solutions to the problem;

(d) interview the resident, as well as other residents, staff, family, friends and physician as deemed necessary;

(e) make phone calls, on-site observation, review resident records, and make collateral contacts with other agencies and professionals; and

(f) take any other appropriate investigatory actions within the purview of the LTCO Program.

(g) During the course of the investigation, the local LTCO shall look for credible evidence which supports or refutes the complaint. Evidence may be directly observed by the LTCO or indirectly gathered from statements from reliable sources. The State LTCO shall provide consultation and technical assistance regarding the methods used in investigating complaints as requested by the local LTCO.

(h) Ombudsmen shall be provided privacy by the facility or agency during all aspects of the investigative process.

(5) Determining Validity of Complaint

(a) The local LTCO, having gathered evidence regarding the complaint, shall review the evidence to determine whether that evidence supports the allegations made in the complaint. If the local LTCO is uncertain as to whether the complaint is valid, he shall discuss the situation with his supervisor. If further consultation is necessary, contact should be made with the State LTCO, who may suggest additional activities or approaches to the problem. The local LTCO shall gather further evidence from interviews, collateral contacts, and records review, until the body of evidence enables the local LTCO to make a supportable decision regarding validity of the complaint.

(b) Upon determination of the validity of the complaint, the local LTCO shall document the determination and reasons for it in the case file.

(6) Resolution of Complaints

(a) Having determined that the complaint is valid, the local LTCO shall take appropriate steps to resolve the complaint, including:

(i) determining the scope of the problem. Does the problem affect just the residents mentioned in the complaint, or does it affect other residents?

(ii) determining what options exist to resolve the complaint. For example, can the complaint be resolved immediately, will the resolution require negotiation with the facility management, or has the facility already moved to resolve the situation.

(iii) discussing with the resident which of the options are acceptable to resolve the complaint. Determining an acceptable resolution may require negotiation between the parties to achieve an acceptable resolution to the situation.

(iv) developing with the resident and facility a plan to achieve the agreed-upon resolution. The plan may be very simple or may have several steps and involve other agencies. Once the plan is agreed upon, the local LTCO, facility, resident, and other parties shall take action to implement the plan.

(v) making referrals to other agencies if a referrals are required by the plan.

(a) If during the investigation process the local LTCO determines that the incident or activities should be referred to APS, Health Facility Licensure, or Health Facility Review, the LTCO shall immediately make the referral and involve all appropriate agencies.

(b) The local LTCO who has referred the complaint to another agency shall follow up to obtain final results and record the outcome of the other agency's investigation. If the other agency does not respond or if the response is inadequate, the local LTCO may:

(1) contact the agency; or

(2) contact the State LTCO for technical assistance or help in resolving the problem with the other agency; or

(3) collaborate with another advocacy agency, such as the Legal Center for People with Disabilities, the Senior Citizens Law Center, or the local office of Utah Legal Services to resolve the issue and clarify substantive legal rights of elderly residents; or

(4) track on-going problems with an agency or facility to build a body of credible evidence on which to base further action; or

(5) take any other appropriate action within the LTCO scope of authority, including filing legal action against the other agency if the AAA has the legal resources to bring legal action.

(6) compiling documentation of the validity of the complaint, of the agreed-upon outcome, and the steps taken to carry out the plan. The documentation may be summary in nature, but should clearly indicate the situation and its resolution.

(7) determining at what point the case is appropriately closed.

(8) notifying the complainant, verbally or in writing, that the investigation has been completed and the case is closed.

(7) Records

(a) The local LTCO shall maintain a set of records by resident, containing all required forms and relevant documentation, including:

(i) a completed intake form;

(ii) case recording consisting of: the nature of the complaint; validity of complaint and reasons for the determination; plan for resolution; implementation and outcome of plan; and dates and names of any collateral contacts.

(iii) consent forms; and

(iv) copies of any correspondence or written documents pertaining to the complaint, the investigation, the resolution plan, or implementation of the resolution plan.

(b) The local LTCO shall also maintain information by facility relating to all referrals.

(c) All actions, findings, conclusions, recommendations and follow-up shall be documented on the required state forms.

(8) Consent Forms

(a) In order to access resident files maintained in a facility, the local LTCO must attempt to obtain a signed release from the resident or the resident's legal representative. Signed releases shall be maintained in the case file and a copy shall be given to

the facility or agency for inclusion in the residents record.

(b) If the local LTCO is unable to obtain written permission, he may get verbal approval from the resident or the resident's legal representative. The date and method of obtaining the verbal approval, e.g. phone contact with guardian, shall be documented in the case file. LTCO shall attempt to have a third-party witness the verbal consent and document it in the record.

(c) If a request for written or verbal consent is denied by the resident or their legal representative, the local LTCO shall not access the records.

(d) If the request for written or verbal consent is unsuccessful for any reason other than specific denial by the resident or legal representative, the local LTCO may proceed to access the records. The reasons for not obtaining consent shall be documented in the case file.

(9) Access to LTCO Records

(a) Records maintained by the local LTCO shall be available to the LTCO, their supervisor, the LTCO Program Director, the State LTCO, and any duly authorized agent of the AAA or the Division with program oversight responsibility. No other staff shall have access to these records.

(b) Residents have the right to read their LTCO records; however, the name of any complainants shall be withheld.

(c) LTCO records shall be released to other persons if the resident provides written consent. The consent form must be filed in the resident's file.

(d) State and federal auditors may have access to LTCO records as required for administration of the program.

(d) Statistical information and other data regarding the LTCO program which does not identify specific residents or complainants is available for public dissemination.

(10) Reporting Requirements to State LTCO

Local LTCO programs shall report to the State LTCO on the operation of the LTCO program. Reports shall include the data required to complete the State's report to the U.S. Department of Health and Human Services, Administration on Aging. Reports shall be submitted within time frames and in a format which shall be mutually agreed upon by the Division and AAAs.

(11) Legal Issues

(a) Legal representation: The Division is responsible for assuring that adequate legal representation is available for local LTCO Programs. AAAs and their governing authorities shall have the option to provide legal representation for their local LTCO Program. If an AAA, through their governing authority, opts not to provide this representation, the Division shall arrange for the representation through the attorney general or through contract. All AAA requests for legal consultation or representation shall be directed to the State LTCO for action. The Division is responsible to assure that no conflict of interest is present in the provision of legal representation to local LTCO Programs.

(b) Liability: The local LTCO must operate within the scope of the ombudsman job description and this policy. Actions such as transporting a client, acting as a guardian or payee, signing consent forms for survey, medication, restraints, etc., signing medical directives, receiving a client power of attorney, and similar actions are outside the scope of the LTCO responsibilities. In doubtful situations the ombudsman should consult with supervisors, legal counsel or the State LTCO.

(c) Guardianship:If a resident has a legal guardian, the local LTCO must work with the guardian. If the local LTCO identifies problems in the guardianship, they will discuss the situation with the local adult protective services staff to determine the advisability of investigating for abuse, neglect, or exploitation. They may also consult legal counsel or present issues to the court which oversees the guardianship.

(12) Volunteers

Local LTCO programs which use volunteers shall follow AAA policy with respect to applications, screening and approval, reference checks, personnel records, reimbursement, supervision, liability and all other relevant aspects of the volunteer program. In addition, volunteers must meet specific training and certification requirements contained in these rules if they are serving in the capacity of local ombudsman or assistant ombudsman.

(13) Public Education

In addition to receiving and investigating complaints, local LTCO Programs are mandated by federal and state statute to provide public education regarding long-term care issues. This may include activities such as frequent presence in facilities, community advocacy, attendance at family or resident councils, technical assistance and in service to long-term care facilities, community organizations, and public information presentations.

KEY: elderly, ombudsman
1994 62A-3-201 to 8
Notice of Continuation January 8, 1998 62A-3-104

R510. Human Services, Aging and Adult Services.
R510-400. Home and Community-Based Alternatives Services Policy and Procedures.
R510-400-1. Authority and Purpose.

(1) Authority.

Home and Community-Based Alternatives Services are provided by Section 62A-3-104 and the Older Americans Act, Title III B and Title III D. The Utah State Department of Human Services is the umbrella agency with oversight responsibility for the Division of Aging and Adult Services. Home and Community-Based Alternatives Services are funded from several sources and administered by the Division of Aging and Adult Services.

(2) Purpose.

(a) Home and Community-Based Alternatives Services provide 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 client who can continue to live in his own home, if his 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.

(b) The objective of the Older Americans Act Title III B and III D Services is to provide services to the frail older client, including the older client who is a victim of Alzheimer's disease

and related disorders with neurological and organic brain dysfunction, and to his family.

R510-400-2. 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 subcontracting 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 functional strengths and deficits, living environment, social resources and care giving needs.

(5) Caregiver means an individual who has the primary responsibility of providing care and/or supervision to an adult, three or more times a week.

(6) Care Plan means a written plan which contains a description of the needs of the client, the services necessary to meet those needs, and the goals to be achieved.

(7) Case Management means assessment, reassessment, determination of eligibility, development of a care plan, ongoing documentation, arranging client-specific services, case recording, client monitoring and follow-up.

8. DAAS Approved Assessment Instrument means a document that meets minimum assessment criteria, as determined by DAAS, for documenting the needs of individuals.

(9) Department means the Utah State Department of Human Services.

(10) Director means the Director of the Agency.

(11) Division means the Utah State Division of Aging and Adult Services.

(12) Emergency means that a disabled adult is at risk of death or immediate and serious harm to self or others, as provided by Section 62A-3-301(6)(12).

(13) Equipment, Rent or Purchase means rental or purchase of equipment deemed necessary for the client's care.

(14) Home means an individual's place of residence.

(15) Home Health Aide means basic assistance and health maintenance by an Aide to individuals in a home setting under the supervision of appropriate health care professionals.

(16) Homemaker means services which provide assistance in maintaining the client's home environment and home management.

(17) Housekeeping Services means 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 his 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 disabled adult, as provided by Section 62A-3-301(12).

(20) Personal Care means assistance with activities of daily living in a home setting, to an individual who is unable to care for himself or when the caretaker is temporarily absent or requires respite.

(21) Respite means a rest or relief for the primary Caregiver from care giving burdens and responsibilities, to maintain the Caregiver as the primary person delivering care giving activities.

(22) Risk Score means a score that reflects the amount of risk an individual has of premature institutionalization. Risk is determined using a DAAS approved assessment instrument that reflects a moderate to high degree of functional, environmental, social resource and care giving needs by an individual.

(23) Screening Assessment means an instrument that initially determines if an individual has a degree of functional limitation that may potentially deem him eligible for Home and Community-Based Alternatives Services.

(24) Voluntary Contributions means a voluntary donation of money that a client or the family pays and may be in addition to an assessed fee for service.

R510-400-3. Funding Source.

(1) Home and Community-Based Alternatives Services are funded by a variety of Federal, State and local community dollars, program fees, voluntary and public contributions.

(2) The Older Americans Act Title III B and III D Services are funded by Federal dollars allocated by Congress, State matching funds, local matching funds and voluntary contributions.

R510-400-4. 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 III B and III D Services may be provided to eligible Aging and Aged Adults, as specified under Section 321, 341 and 342 of the Older Americans Act, 1965 as amended.

R510-400-5. Authorized Services.

The Agency may provide or provide 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 at home. These services may include case management, homemaker, personal care, home health assistance, skilled health care, respite, equipment rental or purchase, emergency response systems or other services as needed.

R510-400-6. 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 III B and III D Services participants shall not be assessed fees for receiving Older Americans Act Title III B and Title III D funded services, as specified under Section 321, 341 and 342 of the Older Americans Act, 1965 as amended.

R510-400-7. Service Provider Requirements.

Home and Community-Based Alternatives Services shall be provided through a public agency or a private licensed Service Provider Agency with at least one year experience in providing home support or home health services.

R510-400-8. Client Vouchers.

The agency shall develop policy and procedures for the provision of a voucher system of payment that may be available to the client who is able to manage the provision of services specified in his care plan. Such policy and procedures shall be developed in accordance to guidelines found in the Division's Home and Community-Based Alternatives Services Procedure Manual.

R510-400-9. Client Assessment.

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 he shall be referred for an Assessment or referred to another agency or community resource.

R510-400-10. Care Planning.

The client's Care Plan shall be developed based upon his current situation and needs as identified by the DAAS approved assessment instrument.

R510-400-11. Payment to Relatives.

The Agency shall develop policy and procedures for the provision of direct payments to a relative of the eligible client for care giving services that comply with the Health Care Assistant Registration Act as found in Section 58-62-101 and DAAS Policy and Procedures for Home and Community-Based Alternatives Services as found in Utah Administrative Code R 510-400.

R510-400-12. Case Management.

Case Management shall be provided to all recipients of Home and Community-Based Alternatives Services.

R510-400-13. Record Keeping.

The recipient of Home and Community-Based Alternatives Services shall have an individual case file that includes 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.

R510-400-14. Client Rights and Responsibilities.

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 Client's Rights and Responsibilities Form in the case file.

R510-400-15. Grievance Procedures.

The Agency shall have the responsibility to develop procedures for Client Grievance and Fair Hearing.

R510-400-16. Waiting Lists.

The Agency shall maintain an active waiting list when funding dictates that services cannot be provided for all who have been identified as needing services.

R510-400-17. Termination of Service.

The Agency shall allow for the interruption, transfer and termination of services for the client receiving Home and Community-Based Alternatives Services or Older Americans Act Title III B and III D Services, whose needs, Agency Provider, circumstances or condition warrants.

R510-400-18. 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.

R510-400-19. Contract Compliance.

The Division is responsible for monitoring Home and Community-Based Alternatives Services and Older Americans Act Title III B and III D Services. Each Agency shall be monitored annually.

R510-400-20. Emergency Interim Service.

Home and Community-Based Alternatives Services may be provided to the client when circumstances warrant the emergency provision of service.

KEY: elderly, home care services, long-term care alternatives
December 17, 1996 62A-3-101 through 62A-3-312
Notice of Continuation January 8, 1998

R512. Human Services, Child and Family Services.

R512-2. Title IV-B Child Welfare/Family Preservation and Support Services and Title I-VE Foster Care, Adoption, and Independent Living.

R512-2-1. Child Welfare/Family Preservation and Support Services.

The Division of 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 amended through January 1, 1997 (accessed through the Internet at http://www.ssa.gov/lawsregs.htm), incorporated by reference; and

B. 45 CFR Parts 1355 and 1357 as updated through October 1, 1996 (accessed through the Internet at http://www.access.gpo.gov), incorporated by reference.

R512-2-2. Title IV-E Foster Care, Adoption, and Independent Living.

The Division of 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 amended in 1996 (accessed through the Internet at http://www.ssa.gov/lawsregs.htm), incorporated by reference; and

B. 45 CFR Part 1356, as updated through October 1, 1996 (accessed through the Internet at http://www.access.gpo.gov), incorporated by reference.

KEY: child welfare, foster care, adoption, eligibility*
February 1, 1998 62A-4a-105
Notice of Continuation October 29, 1997

R527. Human Services, Recovery Services.
R527-3. Definitions.
R527-3-1. Definitions.

1. Terms used in this title, R527, are defined in Section 62A-11-103, 62A-11-202, and 62A-11-303, and 62A-11-401. In addition, the following terms are defined:

2. "ORS" means the Office of Recovery Services.

3. "ORSIS" means the Office of Recovery Services Computer Information System.

4. "BCS" means the Bureau of Collection Services.

5. "BCSS" means the Bureau of Child Support Services.

6. "MSG" means Management Support Group.

7. "ASU" means Agency Services Unit.

8. "IV-D" refers to Title IV-D of the Social Security Act.

9. "IV-D agency" refers to the state agency that administers a child support program under Title IV-D of the Social Security Act.

10. "IV-D recipient" refers to a person who receives IV-D services.

11. "IV-A" refers to Title IV-A of the Social Security Act.

12. "IV-A agency" refers to the state agency that administers a public entitlement program under Title IV-A of the Social Security Act.

13. "IV-A recipient" refers to a person who receives IV-A benefits.

14. "URESA" refers to Title 77, Chapter 31 (Uniform Reciprocal Enforcement of Support Act).

15. "CS" means child support.

16. "AFDC" refers to the Aid to Families with dependent children program.

17. "Pass-through payments" as used in R527-40-1(3) and R527-337-1 refers to the first $50 of the current support that ORS collects for a month in which the custodial parent receives AFDC. This amount is paid to the AFDC household by OFS.

18. "IRS" refers to the Internal Revenue Service.

19. "TPL" means Third Party Liability.

KEY: child support, welfare

February 21, 1996	**62A-11-103**
Notice of Continuation January 12, 1998	**62A-11-202**
	62A-11-303
	62A-11-401

R527. Human Services, Recovery Services.
R527-5. Release of Information.
R527-5-1. Statutory Authority.

The Office of Recovery Services' case information has been classified in accordance with Title 63, Chapter 2.

R527-5-2. Definitions.

1. Terms used in this rule are defined in 63-2-103.

R527-5-3. Request for Release of Information.

1. Written requests for information shall be submitted in accordance with section 63-2-204 to the appropriate ORS office that maintains the record:

A. OFFICE OF RECOVERY SERVICES
ATTN: ASU Records Officer
P.O. BOX 45011
515 East 100 South
Salt Lake City, Utah 84145-0011.

B. OFFICE OF RECOVERY SERVICES
ATTN: MSG UNIT/GRAMA
523 Heritage Blvd., Suite 1
Layton, Utah 84041

C. OFFICE OF RECOVERY SERVICES
ATTN: MSG UNIT/GRAMA
2540 Washington Blvd.
Ogden, Utah 84401.

D. OFFICE OF RECOVERY SERVICES
ATTN: MSG UNIT/GRAMA
150 East Center St.
Provo, Utah 84606.

E. OFFICE OF RECOVERY SERVICES
ATTN: MSG UNIT/GRAMA
1088 South Highway 89
Richfield, Utah 84701.

F. OFFICE OF RECOVERY SERVICES
ATTN: MSG UNIT/GRAMA
168 North 100 East
St. George, Utah 84770.

2. Written requests for expedited release of information in accordance with section 63-2-204 shall be submitted to:

A. OFFICE OF RECOVERY SERVICES
ATTN: ASU Records Officer
515 East 100 South
P.O. Box 45011
Salt Lake City, Ut. 84145-0011

R527-5-4. Appeal of Denial of Request for Release of Information.

A request to appeal the denial to access a record shall be submitted in accordance with Section 63-2-401 to:

1. the Director of the Office of Recovery Services for records maintained by Financial Services, Management Services, or ORSIS;

2. the Associate Director of the Bureau of Investigations and Collections in charge of the BIC team that maintains the record;

3. the Associate Director of the Bureau of Child Support Services in charge of the BCSS team that maintains the record.

R527-5-5. Fee Rates.

1. For records which are reproducible in their current form, the fee charged for making copies shall be $1.00 for each page and shall be considered to include actual copy costs and staff time and shall include staff time used for preparing documents for copying.

2. For records which require compiling and reporting in another format, $17.50 per hour shall be charged.

3. If a request for information involves computer programming, ORS shall charge the actual costs.

R527-5-6. Private Information.

1. The following case information shall be considered as private in all Office of Recovery Services' (ORS) case records:

a. information about an applicant or recipient of public assistance or child support services, or about the applicant or recipient's children, except it may be used or disclosed for purposes directly connected with any investigation, prosecution, or criminal or civil proceeding conducted in connection with Utah's child support enforcement plan and all other programs administered by ORS;

b. the social security number of a child, an obligor, an obligee or of any third party, except it may be used or disclosed for purposes directly connected with any investigation, prosecution, or criminal or civil proceeding conducted in connection with Utah's child support enforcement plan and all other programs administered by ORS;

c. the income of the obligee except when establishing or adjusting a support amount, in which case the income of the obligee may be released to the court or the administrative presiding officers and to the obligor or the obligor's authorized representative;

d. the obligor's address, telephone number, and employer, and insurance coverage if the obligor is a state employee, except that:

i. this information may be used or disclosed for purposes directly connected with any investigation, prosecution, or criminal or civil proceeding conducted in connection with Utah's child support enforcement plan and all other programs administered by ORS;

ii. this information may be released to the Department of Human Services, the Department of Health, the Department of Workforce Services, and to the investigative staff of the following agencies: the Departments of Public Safety, Corrections, Natural Resources, and the State Tax Commission.

iii. the name of the obligor's employer may be released to the obligee if the information is necessary for the obligee to file a health insurance claim and the name of the employer is the same as the insurance plan;

iv. if the obligor is a state employee, the obligor's insurance coverage may be released to the obligee if the information is necessary for the obligee to file a health insurance claim;

v. the obligor's address may be released to the obligee in cases in which the obligee has not applied for child support enforcement, but has only applied for locate services as described in R527-69-1;

e. any information about the obligor or obligee's current spouse, except that it may be used or disclosed for purposes directly connected with any investigation, prosecution, or criminal or civil proceeding conducted in connection with Utah's child support enforcement plan and all other programs administered by ORS;

f. any information which is part of a juvenile court record;

g. records of medical or psychological services, including diagnosis and past history of disease or disability;

h. any information received about the obligor or the obligee from a financial institution, except that it may be disclosed as necessary to establish, modify, or enforce a child support obligation.

2. The following information shall be considered as private for the specific program:

a. Foster Care/Youth Corrections:

i. the current placement of the child;

ii. the criminal record of the youth offender;

iii. the financial circumstances of the parent(s) including the monthly support amount, except the financial circumstances and the monthly support amount may be disclosed to the court or the caseworker, but not to the child, youth offender, or the provider;

b. Medicaid Collections/State Hospital/State Developmental Center:

i. records of medical services provided;

ii. medical data, including diagnosis and past history of disease or disability.

R527-5-7. Controlled Information.

The following information shall be considered controlled in all ORS cases:

1. information obtained through the Federal Parent Locator Service (FPLS) and Internal Revenue Service (IRS), until it has been verified;

2. any information provided by third parties who have requested anonymity, including the identity of such third parties;

3. patient records or treatment information in Utah State Hospital cases, when the patient or responsible party has signed an authorization for the release of information. A patient or responsible party's refusal to provide an authorization for release of information may result in the responsible party being assessed for the full cost of a patient's care, if by the refusal to provide the authorization the state is unable to obtain insurance benefits that otherwise would have been paid to the state.

4. records of medical or psychological services, including diagnosis and past history of disease or disability.

R527-5-8. Protected Information.

The following information shall be considered protected in all ORS cases:

1. public assistance investigation files created or maintained for civil, criminal, administrative enforcement purposes or audit purposes;

2. case records prepared solely in anticipation of litigation that are not available under the rules of discovery;

3. test questions and answers to be used in future registration or employment examinations;

4. records that would identify real or personal property and the appraisal or estimated value of property held by the office pending auction;

5. records disclosing an attorney's work product, including the mental impressions or legal theories of an attorney or other representative of a governmental entity concerning litigation;

6. records of communications between a governmental entity and an attorney representing, retained, or employed by the governmental entity if the communications would be privileged as provided in Section 78-24-8.

R527-5-9. Request to Amend a Record.

1. Written requests to contest the accuracy or completeness of a public, private, or protected record shall be submitted in accordance with 63-2-603(2)(b) to the appropriate ORS office that maintains the record as listed in R527-5-3(1).

2. Proceedings shall be governed by Title 63, Chapter 46b, Administrative Procedures Act.

a. All adjudicative proceedings commenced by the office or commenced by other persons affected shall be informal in accordance with 63-46b-4(1).

b. The following persons are designated presiding officers in these adjudicative proceedings:

i. team managers;

ii. program coordinators;

iii. financial services coordinator;

iv. management services coordinator;

v. information analyst supervisor;

vi. associate directors;

vii. directors.

R527-5-10. Reconsideration of Denial to Amend a Record.

1. Reconsideration of a denial to a request to amend a record shall be requested in accordance with 63-46b-13.

2. The request for reconsideration must be submitted in accordance with 63-2-603(2)(b) to:

a. the Director of the Office of Recovery Services for records maintained by Financial Services, Management Services, or ORSIS;

b. the Associate Director in charge of the program within the Bureau of Investigations and Collections for information maintained by BIC;

c. the Associate Director of the Bureau of Child Support Services in charge of the BCSS team that maintains the record.

3. A petition for judicial review may be filed with the district court under 63-2-402(1)(b) to contest the denial of a request to amend a record or under 63-46b-15 to contest a reconsideration decision. A request for reconsideration under 63-46b-13 is not a prerequisite for seeking judicial review.

KEY: child support, confidentiality*, privacy law
January 5, 1998 62A-11-107
Notice of Continuation September 5, 1997 63-2

R614. Labor Commission, Occupational Safety and Health.
R614-1. General Provisions.
R614-1-1. Authority.

A. These rules and all subsequent revisions as approved and promulgated by the Labor Commission, Division of Occupational Safety and Health, are authorized pursuant to Title 34A, Chapter 6, Utah Occupational Safety and Health Act.

B. The intent and purpose of this chapter is stated in Section 34A-6-2 of the Act.

C. In accordance with legislative intent these rules provide for the safety and health of workers and for the administration of this chapter by the Division of Occupational Safety and Health of the Labor Commission.

R614-1-2. Scope.

These rules consist of the administrative procedures of UOSH, incorporating by reference applicable federal standards from 29 CFR 1910 and 29 CFR 1926, and the Utah initiated occupational safety and health standards found in R614-1 through R614-7. Notice has been given and rules filed as required by Subsection 34A-6-104(1)(c) and 34A-6-202(2) of the Utah Occupational Safety and Health Act and by Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

R614-1-3. Definitions.

A. "Access" means the right and opportunity to examine and copy.

B. "Act" means the Utah Occupational Safety and Health Act of 1973.

C. "Administration" means the Division of Occupational Safety and Health of the Labor Commission, also known as UOSH (Utah Occupational Safety and Health).

D. "Administrator" means the director of the Division of Occupational Safety and Health.

E. "Amendment" means such modification or change in a code, standard, rule, or order intended for universal or general application.

F. "Analysis using exposure or medical records" means any compilation of data, or any research, statistical or other study based at least in part on information collected from individual employee exposure or medical records or information collected from health insurance claims records, provided that either the analysis has been reported to the employer or no further work is currently being done by the person responsible for preparing the analysis.

G. "Commission" means the Labor Commission.

H. "Council" means the Utah Occupational Safety and Health Advisory Council.

I. "Days" means calendar days, including Saturdays, Sundays, and holidays. The day of receipt of any notice shall not be included, and the last day of the 30 days shall be included.

J. "Designated representative" means any individual or organization to whom an employee gives written authorization to exercise a right of access. For the purpose of access to employee exposure records and analyses using exposure or medical records, a recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

K. "Division" means the Division of Occupational Safety and Health, known by the acronyum of UOSH (Utah Occupational Safety and Health).

L. "Employee" includes any person suffered or permitted to work by an employer.

1. For Medical Records: "Employee" means a current employee, a former employee, or an employee being assigned or transferred to work where there will be exposure to toxic substances or harmful physical agents. In the case of deceased or legally incapacitated employee, the employee's legal representative may directly exercise all the employee's rights under this section.

M. "Employee exposure record" means a record containing any of the following kinds of information concerning employee exposure to toxic substances or harmful physical agents:

1. Environmental (workplace) monitoring or measuring, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretations of the results obtained;

2. Biological monitoring results which directly assess the absorption of a substance or agent by body systems (e.g., the level of a chemical in the blood, urine, breath, hair, fingernails, etc.) but not including results which assess the biological effect of a substance or agent;

3. Material safety data sheets; or

4. In the absence of the above, any other record which reveals the identity (e.g., chemical, common, or trade name) of a toxic substance or harmful physical agent.

N. Employee medical record

1. "Employee medical record" means a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel, or technician including:

a. Medical and employment questionnaires or histories (including job description and occupational exposures);

b. The results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including X-ray examinations and all biological monitoring);

c. Medical opinions, diagnoses, progress notes, and recommendations;

d. Descriptions of treatments and prescriptions; and

e. Employee medical complaints.

2. "Employee medical record" does not include the following:

a. Physical specimens (e.g., blood or urine samples) which are routinely discarded as a part of normal medical practice, and not required to be maintained by other legal requirements;

b. Records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier (e.g., social security number, payroll number, etc.); or

c. Records concerning voluntary employee assistance programs (alcohol, drug abuse, or personal counseling programs) if maintained separately from the employer's medical program and its records.

O. "Employer" means:

1. The state;

2. Each county, city, town, and school district in the state; and

3. Every person, firm, and private corporation, including public utilities, having one or more workers or operatives regularly employed in the same business, or in or about the same establishment, under any contract of hire.

4. For medical records: "Employer" means a current employer, a former employer, or a successor employer.

P. "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. (For example: A factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and separate notices shall be posted in each establishment to the extent that such notices have been furnished by the Administrator.

1. Establishments whose primary activity constitutes retail trade; finance, insurance, real estate and services are classified in SIC's 52-89.

2. Retail trades are classified as SIC's 52-59 and for the most part include establishments engaged in selling merchandise to the general public for personal or household consumption. Some of the retail trades are: automotive dealers, apparel and accessory stores, furniture and home furnishing stores, and eating and drinking places.

3. Finance, insurance and real estate are classified as SIC's 60-67 and include establishments which are engaged in banking, credit other than banking, security dealings, insurance and real estate.

4. Services are classified as SIC's 70-89 and include establishments which provide a variety of services for individuals, businesses, government agencies, and other organizations. Some of the service industries are: personal and business services, in addition to legal, educational, social, and cultural; and membership organizations.

5. The primary activity of an establishment is determined as follows: For finance, insurance, real estate, and services establishments, the value of receipts or revenue for services rendered by an establishment determines its primary activity. In establishments with diversified activities, the activities determined to account for the largest share of production, sales or revenue will identify the primary activity. In some instances these criteria will not adequately represent the relative economic importance of each of the varied activities. In such cases, employment or payroll should be used in place of normal basis for determining the primary activity.

Q. "Exposure" or "exposed" means that an employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.) and includes past exposure and potential (e.g., accidental or possible) exposure, but does not include situations where the employer can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.

R. "First aid" is any one-time treatment, and any follow-up visit for the purpose of observation of minor scratches, cuts, burns, splinters, and so forth, which do not ordinarily require the attention of a physician. Such one-time treatment, and follow-up visit for the purpose of observation, is considered first aid even though provided by a physician or trained personnel provided that the records comply with R614-1-7.B. and are readily available to the Administrator or his representatives, by direct contact, telephone, or mail.

S. "Hearing" means a proceeding conducted by the commission.

T. "Imminent danger" means a danger exists which reasonably could be expected to cause an occupational disease, death, or serious physical harm immediately, or before the danger could be eliminated through enforcement procedures under this chapter.

U. "Inspection" means any inspection of an employer's factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a complaint filed under R614-1-6.K.1. and 3., any re-inspection, follow-up inspection, accident investigation or other inspection conducted under Section 34A-6-301 of the Act.

V. "Medical treatment" includes treatment administered by a physician or trained personnel under the standing orders of a physician. Medical treatment does not include first aid treatment even though provided by a physician or trained personnel.

W. "National consensus standard" means any occupational safety and health standard or modification:

1. Adopted by a nationally recognized standards-producing organization under procedures where it can be determined by the administrator and division that persons interested and affected by the standard have reached substantial agreement on its adoption;

2. Formulated in a manner which affords an opportunity for diverse views to be considered; and

3. Designated as such a standard by the Secretary of the United States Department of Labor.

X. "Person" means the general public, one or more individuals, partnerships, associations, corporations, legal representatives, trustees, receivers, and the state and its political subdivisions.

Y. "Publish" means publication in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

Z. "Record" means any item, collection, or grouping of information regardless of the form or process by which it is maintained (e.g., paper document, microfiche, microfilm, X-ray film, or automated data processing.)

AA. "Recordable occupational injuries and illnesses" means any occupational injuries or illnesses which result in:

1. Fatalities, regardless of the time between the injury and death, or the length of the illness;

2. Lost time cases, other than fatalities, that result in lost time; or

3. Nonfatal cases without lost time which result in transfer to another job or termination of employment, or require medical

treatment (other than first aid), or involve loss of consciousness or restriction of work or motion. This category also includes any diagnosed occupational illnesses which are reported to the employer but are not classified as fatalities or lost time case.

BB. "Safety and Health Officer" means a person authorized by the Utah Occupational Safety and Health Administration to conduct inspections.

CC. "Secretary" means the Secretary of the United States Department of Labor.

DD. "Specific written consent" means written authorization containing the following:

1. The name and signature of the employee authorizing the release of medical information;

2. The date of the written authorization;

3. The name of the individual or organization that is authorized to release the medical information;

4. The name of the designated representative (individual or organization) that is authorized to receive the released information;

5. A general description of the medical information that is authorized to be released;

6. A general description of the purpose for the release of medical information; and

7. A date or condition upon which the written authorization will expire (if less than one year).

8. A written authorization does not operate to authorize the release of medical information not in existence on the date of written authorization, unless this is expressly authorized, and does not operate for more than one year from the date of written authorization.

9. A written authorization may be revoked in writing prospectively at any time.

EE. "Standard" means an occupational health and safety standard or group of standards which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary to provide safety and healthful employment and places of employment.

FF. "Toxic substance" or "harmful physical agent" means any chemical substance, biological agent (bacteria, virus, fungus, etc.) or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo and hyperbaric pressure, etc) which:

1. Is regulated by any Federal law or rule due to a hazard to health;

2. Is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) (See R614-103-20B Appendix B);

3. Has yielded positive evidence of an acute or chronic health hazard in human, animal, or other biological testing conducted by, or known to the employer; or

4. Has a material safety data sheet available to the employer indicating that the material may pose a hazard to human health.

GG. "Variance" means a special, limited modification or change in the code or standard applicable to the particular establishment of the employer or person petitioning for the modification or change.

HH. "Workplace" means any place of employment.

R614-1-4. Incorporation of Federal Standards.

A. General Industry Standards.

1. Sections 29 CFR 1910.21 to 1910.999 and 1910.1000 through the end of part 1910 of the July 1, 1997, edition are incorporated by reference.

B. Construction Standards.

1. Section 29 CFR 1926.20 through the end of part 1926, of the July 1, 1997 edition is incorporated by reference.

R614-1-5. Adoption and Extension of Established Federal Safety Standards and State of Utah General Safety Orders.

A. Scope and Purpose.

1. The provisions of this rule adopt and extend the applicability of: (1) established Federal Safety Standards, (2) R614, and (3) Workers' Compensation Coverage, as in effect July 1, 1973 and subsequent revisions, with respect to every employer, employee and employment within the boundaries of the State of Utah, covered by the Utah Occupational Safety and Health Act of 1973.

2. All standards and rules including emergency and/or temporary, promulgated under the Federal Occupational Safety and Health Act of 1970 shall be accepted as part of the Standards, Rules and Regulations under the Utah Occupational Safety and Health Act of 1973, unless specifically revoked or deleted.

3. All employers will provide workers' compensation benefits as required in Section 34A-2-201.

4. Any person, firm, company, corporation or association employing minors must comply fully with all orders and standards of the Labor Division of the Commission. UOSH standards shall prevail in cases of conflict.

B. Construction Work.

Federal Standards, 29 CFR 1926 and selected applicable sections of R614 are accepted covering every employer and place of employment of every employee engaged in construction work of:

1. New construction and building;

2. Remodeling, alteration and repair;

3. Decorating and painting;

4. Demolition; and

5. Transmission and distribution lines and equipment erection, alteration, conversion or improvement.

C. Reporting Requirements.

1. Each employer shall investigate or cause to be investigated all work-related injuries and occupational diseases and any sudden or unusual occurrence or change of conditions that pose an unsafe or unhealthful exposure to employees.

2. Each employer shall within 12 hours of occurrence, notify the Division of Utah Occupational Safety and Health of the Commission of any work-related fatalities, of any disabling, serious, or significant injury and of any occupational disease incident. Call (801) 530-6901 or one of the individuals on the following personnel list.

TABLE 1

LABOR COMMISSION
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

BAGLEY, Jay W. (Administrator)
Kaysville, Utah 84037

543-1369

ADAMS, William W. Jr.
Park City, Utah 84060
649-4309

DREMAN, Robert C.
South Ogden, Utah 84405
479-5199

ANDERSON, Neil A.
Kaysville, Utah 84037
544-2791

PADLEY, Gary G.
SLC, Utah 84116
595-6001

3. Each employer shall file a report with the Commission within seven days after the occurrence of an injury or occupational disease, after the employer's first knowledge of the occurrence, or after the employee's notification of the same, on forms prescribed by the Commission, of any work-related fatality or any work-related injury or occupational disease resulting in medical treatment, loss of consciousness or loss of work, restriction of work, or transfer to another job. Each employer shall file a subsequent report with the Commission of any previously reported injury or occupational disease that later resulted in death. The subsequent report shall be filed with the Commission within seven days following the death or the employer's first knowledge or notification of the death. No report is required for minor injuries, such as cuts or scratches that require first-aid treatment only, unless the treating physician files, or is required to file the physician's initial report of work injury or occupational disease with the Commission. Also, no report is required for occupational diseases which manifest after the employee is no longer employed by the employer with which the exposure occurred, or where the employer is not aware of an exposure occasioned by the employment which results in an occupational disease as defined by Section 34A-3-103.

4. Each employer shall provide the employee with a copy of the report submitted to the Commission. The employer shall also provide the employee with a statement, as prepared by the Commission, of his rights and responsibilities related to the industrial injury or occupational disease.

5. Each employer shall maintain a record in a manner prescribed by the Commission of all work-related injuries and all occupational diseases resulting in medical treatment, loss of consciousness, loss of work, restriction of work, or transfer to another job.

6. Tools, equipment, materials or other evidence that might pertain to the cause of such accident shall not be removed or destroyed until so authorized by the Labor Commission or one of its Compliance Officers.

7. No person shall remove, displace, destroy, or carry away any safety devices or safeguards provided for use in any place of employment, or interfere in any way with the use thereof by other persons, or interfere in any method or process adopted for the protection of employees. No employee shall refuse or neglect to follow and obey reasonable orders that are issued for the protection of health, life, safety, and welfare of employees.

D. Employer, Employee Responsibility.

1. It shall be the duty and responsibility of any employee upon entering his or her place of employment, to examine carefully such working place and ascertain if the place is safe, if the tools and equipment can be used with safety, and if the work can be performed safely. After such examination, it shall be the duty of the employee to make the place, tools, or equipment safe. If this cannot be done, then it becomes his or her duty to immediately report the unsafe place, tools, equipment, or conditions to the foreman or supervisor.

2. Employees must comply with all safety rules of their employer and with all the Rules and Regulations promulgated by UOSH which are applicable to their type of employment.

3. Management shall inspect or designate a competent person or persons to inspect frequently for unsafe conditions and practices, defective equipment and materials, and where such conditions are found to take appropriate action to correct such conditions immediately.

4. Supervisory personnel shall enforce safety regulations and issue such rules as may be necessary to safeguard the health and lives of employees. They shall warn all employees of any dangerous condition and permit no one to work in an unsafe place, except for the purpose of making it safe.

E. General Safety Requirements.

1. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

2. Body protection: Clothing which is appropriate for the work being done should be worn. Loose sleeves, tails, ties, lapels, cuffs, or similar garments which can become entangled in moving machinery shall not be worn where an entanglement hazard exists. Clothing saturated or impregnated with flammable liquids, corrosive substances, irritant, oxidizing agents or other toxic materials shall be removed and shall not be worn until properly cleaned.

3. General. Wrist watches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

4. Safety Committees. It is recommended that a safety committee comprised of management and employee representatives be established. The committee or the individual member of the committee shall not assume the responsibility of management to maintain and conduct a safe operation. The duties of the committee should be outlined by management, and may include such items as reviewing the use of safety apparel, recommending action to correct unsafe conditions, etc.

5. No intoxicated person shall be allowed to go into or loiter around any operation where workers are employed.

6. No employee shall carry intoxicating liquor into a place of employment, except that the place of employment shall be engaged in liquor business and this is a part of his assigned duties.

7. Employees who do not understand or speak the English language shall not be assigned to any duty or place where the lack or partial lack of understanding or speaking English might adversely affect their safety or that of other employees.

8. Good housekeeping is the first law of accident prevention and shall be a primary concern of all supervisors and workers. An excessively littered or dirty work area will not be tolerated as it constitutes an unsafe, hazardous condition of employment.

9. Emergency Posting Required.

a. Good communications are necessary if a fire or disaster

situation is to be adequately coped with. A system for alerting and directing employees to safety is an essential step in a safety program.

b. A list of telephone numbers or addresses as may be applicable shall be posted in a conspicuous place so the necessary help can be obtained in case of emergency. This list shall include:

(1) Responsible supervision (superintendent or equivalent)
(2) Doctor
(3) Hospital
(4) Ambulance
(5) Fire Department
(6) Sheriff or Police

10. Lockouts and Tagging.

a. Where there is any possibility of machinery being started or electrical circuits being energized while repairs or maintenance work is being done, the electrical circuits shall be locked open and/or tagged and the employee in charge (the one who places the lock) shall keep the key until the job is completed or he is relieved from the job, such as by shift change or other assignment. If it is expected that the job may be assigned to other workers, he may remove his lock provided the supervisor or other workers apply their lock and tag immediately. Where there is danger of machinery being started or of steam or air creating a hazard to workers while repairs on maintenance work is being done, the employee in charge shall disconnect the lines or lock and tag the main valve closed or blank the line on all steam driven machinery, pressurized lines or lines connected to such equipment if they could create a hazard to workers.

b. After tagging and lockout procedures have been applied, machinery, lines, and equipment shall be checked to insure that they cannot be operated.

c. If locks and tags cannot be applied, conspicuous tags made of nonconducting material and plainly lettered, "EMPLOYEES WORKING" followed by the other appropriate wording, such as "Do not close this switch" shall be used.

d. When in doubt as to procedure, the worker shall consult his supervisor concerning safe procedure.

11. Safety-Type hooks shall be used wherever possible.

12. Emergency Showers, Bubblers, and Eye Washers.

a. Readily accessible, well marked, rapid action safety showers and eye wash facilities must be available in areas where strong acid, caustic or highly oxidizing or irritating chemicals are being handled. (This is not applicable where first aid practices specifically preclude flushing with running water.)

b. Showers should have deluge type heads, easily accessible, plainly marked and controlled by quick opening valves of the type that stay open. The valve handle should be equipped with a pull chain, rope, etc., so the blinded employee will be able to more easily locate the valve control. In addition, it is recommended that the floor platform be so constructed to actuate the quick opening valve. The shower should be capable of supplying large quantities of water under moderately high pressure. Blankets should be located so as to be reasonably accessible to the shower area.

c. Eye wash fountain or a ready source of running tap water, such as drinking fountain or hose with a gentle flow of water should be immediately available for eye irrigation. All safety equipment should be inspected and tested at regular intervals, preferably daily and especially during freezing weather, to make sure it is in good working condition at all times.

13. Grizzlies Over Chutes, Bins and Tank Openings.

a. Employees shall be furnished with and be required to use approved type safety belts and shall be tied off securely so as to suspend him above the level of the product before entering any bin, chute or storage place containing material that might cave or run. Cleaning and barring down in such places shall be started from the top using only bars blunt on one end or having a ring type or D handhold.

b. Employees shall not work on top of material stored or piled above chutes, drawholes or conveyor systems while material is being withdrawn unless protected.

c. Chutes, bins, drawholes and similar openings shall be equipped with grizzlies or other safety devices that will prevent employees from falling into the openings.

d. Bars for grizzly grids shall be so fitted that they will not loosen and slip out of place, and the operator shall not remove a bar temporarily to let large rocks through rather than to break them.

R614-1-6. Personal Protective Equipment.

A. When no other method or combination of methods can be provided to prevent employees from becoming exposed to toxic dusts, fumes, gases, flying particles or other objects, dangerous rays or burns from heat, acid, caustic, or any other hazard of a similar nature, the employer must provide each worker with the necessary personal protection equipment, such as respirators, goggles, gas masks, certain types of protective clothing, etc. Provision must also be made to keep all such equipment in good, sanitary working condition at all times.

B. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

C. Except when, in the opinion of the Administrator, their use creates a greater hazard, life lines and safety belts shall be provided for and used by workers engaged in window washing, in securing or shifting thrustouts, inspecting or working on overhead machines supporting scaffolds or other high rigging, and on steeply pitched roofs. Similarly, they shall be provided for and used by all exposed to the hazard of falling, and by workmen on poles workers or steel frame construction more than ten (10) feet above solid ground or above a temporary or permanent floor or platform.

D. Every life line and safety belt shall be inspected by the superintendent or his authorized representative and the worker before it is used and at least once a week while continued in use.

E. Wristwatches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

R614-1-7. Inspections, Citations, and Proposed Penalties.

A. The Utah Occupational Safety and Health Act (Title 34A, Chapter 6) requires, that every employer covered under the Act furnish to his employees employment and a place of employment which are free from recognized hazards that are likely to cause death or serious physical harm to his employees. The Act also requires that employers comply with occupational

safety and health standards promulgated under the Act, and that employees comply with standards, rules, regulations and orders issued under the Act applicable to employees actions and conduct. The Act authorizes the Utah Occupational Safety and Health Division to conduct inspections, and to issue citations and proposed penalties for alleged violations. The Act, under Section 34A-6-301, also authorizes the Administrator to conduct inspections and to question employers and employees in connection with research and other related activities. The Act contains provisions for adjudication of violations, periods prescribed for the abatement of violations, and proposed penalties by the Labor Commission, if contested by an employer or by an employee or authorized representative of employees, and for a judicial review. The purpose of R614-1-7 is to prescribe rules and general policies for enforcement of the inspection, citations, and proposed penalty provisions of the Act. Where R614-1-7 sets forth general enforcement policies rather than substantive or procedural rules, such policies may be modified in specific circumstances where the Administrator or his designee determines that an alternative course of action would better serve the objectives of the Act.

B. Posting of notices; availability of Act, regulations and applicable standards.

1. Each employer shall post and keep posted notices, to be furnished by the Administrator, informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact their employer or the office of the Administrator. Such notices shall be posted by the employer in each establishment in a conspicuous place where notices to employees are customarily posted. Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.

2. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation communications, and electric, gas and sanitary services, the notices required shall be posted at the location where employees report each day. In the case of employees who do not usually work at, or report to, a single establishment, such as traveling salesman, technicians, engineers, etc., such notices shall be posted in accordance with the requirements of R614-1-7.Q.

3. Copies of the Act, all regulations published under authority of Section 34A-6-202 and all applicable standards will be available at the office of the Administrator. If an employer has obtained copies of these materials, he shall make them available upon request to any employee or his authorized representative.

4. Any employer failing to comply with the provisions of this Part shall be subject to citation and penalty in accordance with the provisions of Sections 34A-6-302 and 34A-6-307 of the Act.

C. Authority for Inspection.

1. Safety and Health Officers of the Division are authorized to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee; and to review records required by the Act and regulations published in R614-1-7 and 8, and other records which are directly related to the purpose of the inspection.

2. Prior to inspecting areas containing information which has been classified as restricted by an agency of the United States Government in the interest of national security, Safety and Health Officers shall obtain the appropriate security clearance.

D. Objection to Inspection.

1. Upon a refusal to permit the Safety and Health Officer, in exercise of his official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any employer, owner, operator, agent, or employee, in accordance with R614-1-7.B. and C. or to permit a representative of employees to accompany the Safety and Health Officer during the physical inspection of any workplace in accordance with R614-1-7.G. the Safety and Health Officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records or interview concerning which no objection is raised.

2. The Safety and Health Officer shall endeavor to ascertain the reason for such refusal, and shall immediately report the refusal and the reason therefor to the Administrator. The Administrator shall take appropriate action, including compulsory process, if necessary.

3. Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the Administrator circumstances exist which make such preinspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include (but are not limited to):

a. When the employers past practice either implicitly or explicitly puts the Administrator on notice that a warrantless inspection will not be allowed:

b. When an inspection is scheduled far from the local office and procuring a warrant prior to leaving to conduct the inspection would avoid, in case of refusal of entry, the expenditure of significant time and resources to return to the office, obtain a warrant and return to the work-site;

c. When an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

4. For purposes of this section, the term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent. Ex parte inspection warrants shall be the preferred form of compulsory process in all circumstances where compulsory process is relied upon to seek entry to a workplace under this section.

E. Entry not a Waiver.

Any permission to enter, inspect, review records, or question any person, shall not imply a waiver of any cause of action, citation, or penalty under the Act. Safety and Health Officers are not authorized to grant such waivers.

F. Advance notice of Inspections.

1. Advance notice of inspections may not be given, except in the following instances:

a. In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible.

b. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection.

c. Where necessary to assure the presence of the employer or representative of the employer and employees or the appropriate personnel needed to aid the inspection; and

d. In other circumstances where the Administrator determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

2. In the instances described in R614-1-7.F.1., advance notice of inspections may be given only if authorized by the Administrator, except that in cases of imminent danger, advance notice may be given by the Safety and Health Officer without such authorization if the Administrator is not immediately available. Where advance notice is given, it shall be the employer's responsibility to notify the authorized representative of the employees of the inspection, if the identity of such representatives is known to the employer. (See R614-1-7.H.2. as to instances where there is no authorized representative of employees.) Upon the request of the employer, the Safety and Health Officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the Safety and Health Officer with the identity of such representatives and with such other information as is necessary to enable him promptly to inform such representatives of the inspection. A person who fails to comply with his responsibilities under this paragraph, may be subject to citation and penalty under Sections 34A-6-302 and 34A-6-307 of the Act. Advance notice in any of the instances described in R614-1-7.F. shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in cases of imminent danger and other unusual circumstances.

3. The Act provides in Subsection 34A-6-307(5)(b) conditions for which advanced notice can be given and the penalties for not complying.

G. Conduct of Inspections.

1. Subject to the provisions of R614-1-7.C., inspections shall take place at such times and in such places of employment as the Administrator or the Safety and Health Officer may direct. At the beginning of an inspection, Safety and Health Officers shall present their credentials to the owner, operator, or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in R614-1-7.C. which they wish to review. However, such designations of records shall not preclude access to additional records specified in R614-1-7.C..

2. Safety and Health Officers shall have authority to take environmental samples and to take photographs or video recordings related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment. (See R614-1-7.I. on trade secrets.) As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges, and other similar devices to employees in order to monitor their exposures.

3. In taking photographs and samples, Safety and Health Officers shall take reasonable precautions to insure that such actions with flash, spark-producing, or other equipment would not be hazardous. Safety and Health Officers shall comply with all employer safety and health rules and practices at the establishment being inspected, and shall wear and use appropriate protective clothing and equipment.

4. The conduct of inspections shall preclude unreasonable disruption of the operations of the employer's establishment.

5. At the conclusion of an inspection, the Safety and Health Officer shall confer with the employer or his representative and informally advise him of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the Safety and Health Officer any pertinent information regarding conditions in the workplace.

H. Representative of employers and employees.

1. Safety and Health Officer shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Safety and Health Officer during the physical inspection of any workplace for the purpose of aiding such inspection. A Safety and Health Officer may permit additional employer representative and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the Safety and Health Officer during each phase of an inspection if this will not interfere with the conduct of the inspection.

2. Safety and Health Officers shall have authority to resolve all disputes as to who is the representative authorized by the employer and the employees for purpose of this Part. If there is no authorized representative of employees, or if the Safety and Health Officer is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

3. The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the Safety and Health Officer, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Safety and Health Officer during the inspection.

4. Safety and Health Officers are authorized to deny the right of accompaniment under this Part to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be

subject to the provisions of R614-1-7.I.3. With regard to information classified by an agency of the U.S. Government in the interest of national security, only persons authorized to have access to such information may accompany a Safety and Health Officer in areas containing such information.

I. Trade secrets.

1. Section 34A-6-306 of the Act provides provisions for trade secrets.

2. At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the Safety and Health Officer has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, and environmental samples, shall be labeled "confidential-trade secret" and shall not be disclosed except in accordance with the provisions of Section 34A-6-306 of the Act.

3. Upon the request of an employer, any authorized representative of employees under R614-1-7.H. in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is not such representative or employee, the Safety and Health Officer shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

J. Consultation with employees.

Safety and Health Officers may consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act which he has reason to believe exists in the workplace to the attention of the Safety and Health Officer.

K. Complaints by employees.

1. Any employee or representative of employees who believe that a violation of the Act exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the Administrator or to a Safety and Health Officer. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy of the notice shall be provided the employer or his agent by the Administrator or Safety and Health Officer no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the Administrator.

2. If upon receipt of such notification the Administrator determines that the complaint meets the requirements set forth in R614-1-7.K.1., and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable. Inspections under this Part shall not be limited to matters referred to in the complaint.

3. Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Safety and Health Officer, in writing, of any violation of the Act which they have reason to believe exists in such workplace. Any such notice shall comply with requirements of R614-1-7.K.1.

4. Section 34A-6-203 of the Act provides protection for employees while engaged in protected activities.

L. Inspection not warranted; informal review.

1. If the Administrator determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under K, he shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the Administrator. The Administrator, at his discretion, may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral view presented, the Administrator shall affirm, modify, or reverse the determination of the previous decision and again furnish the complaining party and the employer written notification of his decision and the reasons therefor.

2. If the Administrator determines that an inspection is not warranted because the requirements of R614-1-7.K.1. have not been met, he shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of R614-1-7.K.1..

M. Imminent danger.

Whenever a Safety and Health Officer concludes, on the basis of an inspection, that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm before the imminence of such danger can be eliminated through the enforcement procedures of the Act, he shall inform the affected employees and employers of the danger, that he is recommending a civil action to restrain such conditions or practices and for other appropriate citations of proposed penalties which may be issued with respect to an imminent danger even though, after being informed of such danger by the Compliance Officer, the employer immediately eliminates the imminence of the danger and initiates steps to abate such danger.

N. Citations.

1. The Administrator shall review the inspection report of the Safety and Health Officer. If, on the basis of the report the Administrator believes that the employer has violated a requirement of Section 34A-6-201 of the Act, of any standard, rule, or order promulgated pursuant to Section 34A-6-202 of the Act, or of any substantive rule published in this chapter, shall issue to the employer a citation. A citation shall be issued even though, after being informed of an alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violations. Any citation shall be issued with reasonable promptness after termination of the inspection. No citation may be issued after the expiration of 6 months following the occurrence of any violation.

2. Any citation shall describe with particularity the nature of the alleged violation, including a reference to the provision of the Act, standard, rule, regulations, or order alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violations.

3. If a citation is issued for an alleged violation in a

request for inspection under R614-1-7.K.1. or a notification of violation under R614-1-7.K.3., a copy of the citation shall also be sent to the employee or representative of employees who made such request or notification.

4. Following an inspection, if the Administrator determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under R614-1-7.K.1.or a notification of violation under R614-1-7.K.3., the informal review procedures prescribed in R614-1-7.L.1. shall be applicable. After considering all views presented, the Administrator shall either affirm, order a re-inspection, or issue a citation if he believes that the inspection disclosed a violation. The Administrator shall furnish the complaining party and the employer with written notification of his determination and the reasons therefor.

5. Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless the citation is affirmed by the Commission.

O. Petitions for modification of abatement date.

1. An employer may file a petition for modification of abatement date when he has made a good faith effort to comply with the abatement requirements of the citation, but such abatement has not been completed because of factors beyond his reasonable control.

2. A petition for modification of abatement date shall be in writing and shall include the following information.

a. All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

b. The specific additional abatement time necessary in order to achieve compliance.

c. The reasons such additional time is necessary, including the unavailability, of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

d. All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

e. A certification that a copy of the petition has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with paragraph R614-1-7.O.3.a. and a certification of the date upon which such posting and service was made.

3. A petition for modification of abatement date shall be filed with the Administrator who issued the citation no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

a. A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. The petition shall remain posted for a period of ten (10) days. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.

b. Affected employees or their representatives may file an objection in writing to such petition with the aforesaid Administrator. Failure to file such objection within ten (10) working days of the date of posting of such petition or of service upon an authorized representative shall constitute a waiver of any further right to object to said petition.

c. The Administrator or his duly authorized agent shall have authority to approve any petition for modification of abatement date filed pursuant to paragraphs R614-1-7.O.2. and 3.. Such uncontested petitions shall become final orders pursuant to Subsection 34A-6-303(1) of the Act.

d. The Administrator or his authorized representative shall not exercise his approval power until the expiration of ten (10) days from the date of the petition was posted or served pursuant to paragraphs R614-1-7.O.3.a. and b. by the employer.

4. Where any petition is objected to by the affected employees, the petition, citation, and any objections shall be forwarded to the Administrator per R614-1-7.O.3.b. Upon receipt the Administrator shall schedule and notify all interested parties of a formal hearing before the Administrator or his authorized representative(s). Minutes of this hearing shall be taken and become public records of the Commission. Within ten (10) days after conclusion of the hearing, a written opinion by the Administrator will be made, with copies to the affected employees or their representatives, the affected employer and to the Commission.

P. Proposed penalties.

1. After, or concurrent with, the issuance of a citation and within a reasonable time after the termination of the inspection, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of the proposed penalty under Section 34A-6-307 of the Act, or that no penalty is being proposed. Any notice of proposed penalty shall state that the proposed penalty shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notice, the employer notifies the Adjudication Division in writing that he intends to contest the citation or the notification of proposed penalty before the Commission.

2. The Administrator shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of the penalty with respect to the size of the business, of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations, in accordance with the provisions of Section 34A-6-307 of the Act.

3. Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of such alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Penalties shall not be proposed for violations which have no direct or immediate relationship to safety or health.

Q. Posting of citations.

1. Upon receipt of any citation under the Act, the employer shall immediately post such citation, or copy thereof, unedited, at or near each place of alleged violation referred to in the citation occurred, except as hereinafter provided. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, such citation shall be posted, unedited, in a prominent

place where it will be readily observable by all affected employees. For example, where employees are engaged in activities which are physically dispersed (see R614-1-7.B.), the citation may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location (see R614-1-7.B.2.), the citation must be posted at the location from which the employees commence their activities. The employer shall take steps to ensure that the citation is not altered, defaced, or covered by other material.

2. Each citation or a copy thereof, shall remain posted until the violation has been abated, or for 3 working days which ever is later. The filing by the employer of a notice of intention to contest under R614-1-7.R. shall not affect his posting responsibility unless and until the Commission issues a final order vacating the citation.

3. An employer, to whom a citation has been issued, may post a notice in the same location where such citation is posted indicating that the citation is being contested before the Commission, such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

4. Any employer failing to comply with the provisions of R614-1-7.Q.1. and 2. shall be subject to citation and penalty in accordance with the provisions of Section 34A-6-307 of the Act.

R. Employer and employee hearings before the Commission.

1. Any employer to whom a citation or notice of proposed penalty has been issued, may under Section 34A-6-303 of the Act, notify the Adjudication Division in writing that he intends to contest such citation or proposed penalty before the Commission. Such notice of intention to contest shall be postmarked within 30 days of the receipt by the employer of the notice of proposed penalty. Every notice of intention to contest shall specify whether it is directed to the citation or to the proposed penalty, or both. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

2. An employee or representative of employees of an employer to whom a citation has been issued may, under Section 34A-6-303(3) of the Act, file a written notice with the Adjudication Division alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable. Such notice shall be postmarked within 30 days of the receipt by the employer of the notice of proposed penalty or notice that no penalty is being proposed. The Administrator shall handle such notice in accordance with the rules of procedure prescribed by the Commission.

S. Failure to correct a violation for which a citation has been issued.

1. If an inspection discloses that an employer has failed to correct an alleged violation for which a citation has been issued within the period permitted for its correction, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of such failure and of the additional penalty proposed under Section 34A-6-307 of the Act by reason of such failure. The period for the correction of a violation for which a citation has been issued shall not begin to run until the entry of a final order of the Commission in the case of any review proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.

2. Any employer receiving a notification of failure to correct a violation and of proposed additional penalty may, under Section 34A-6-303(3) of the Act, notify the Adjudication Division in writing that he intends to contest such notification or proposed additional penalty before the Commission. Such notice of intention to contest shall be postmarked within 30 days of receipt by the employer of the notification of failure to correct a violation and of proposed additional penalty. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

3. Each notification of failure to correct a violation and of proposed additional penalty shall state that it shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notification, the employer notifies the Adjudication Division in writing that he intends to contest the notification or the proposed additional penalty before the Commission.

T. Informal conferences.

At the request of an affected employer, employee, or representative of employees, the Administrator may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The Administrator shall provide in writing the reasons for any settlement of issues at such conferences. If the conference is requested by the employer, an affected employee or his representative shall be afforded an opportunity to participate, at the discretion of the Administrator. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Administrator. Any party may be represented by counsel at such conference. No such conference or request for such conference shall operate as a stay of any 30 day period for filing a notice of intention to contest as prescribed in R614-1-7.R.

R614-1-8. Recording and Reporting Occupational Injuries and Illnesses.

A. The rules in this section implement Sections 34A-6-108 and 34A-6-301(3) of the Act. These sections provide for record-keeping and reporting by employers covered under the Act, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation, and analysis of occupational safety and health statistics. Regardless of size or type of operation, accidents and fatalities must be reported to UOSH in accordance with the requirements of R614-1-5.C.

B. Exceptions to Recordkeeping and Reporting Requirements.

1. Small Employers. An employer who had no more than ten (10) employees at any time during the calendar year immediately preceding the current calendar year need not comply with any of the requirements of this part except the following:

a. Obligation to report under R614-1-5.C. concerning fatalities or accidents; and

b. Obligation to maintain a log of occupational injuries and illnesses under R614-1-8.C. and to make reports under

R614-1-8.N. upon being notified in writing by the Commission's Statistics Section that the employer has been selected to participate in a statistical survey of occupational injuries and illnesses.

2. Employers who are engaged in farming operations, having 10 or fewer employees are not subject to the Act, including the provisions of this part.

3. Establishments Classified in Standard Industrial Classification Codes (SIC) 52-89, (except 52-54, 70, 75, 76, 79 and 80.) An employer whose establishment is classified in SIC's 52-89, (excluding 52-54, 70, 75, 76, 79 and 80) need not comply, for such establishment, with any of the requirements of this part except the following:

a. Obligation to report under R614-1-5.C. concerning fatalities or serious injury.

b. Obligation to maintain a log of occupational injuries and illnesses under R614-1-8.K. and L. upon being notified in writing by the federal Bureau of Labor Statistics that the employer has been selected to participate in a statistical survey of occupational injuries and illnesses; and

c. Those employers who engage in activities classified as high risk industries (i.e., a real estate establishment engaged in construction activities) must maintain records on the High Risk portions of their operations.

C. Log and summary of occupational injuries and illness.

1. Each employer shall maintain in each establishment a log and summary of all recordable occupational injuries and illnesses for that establishment, except that under the circumstances described in R614-1-8.C.2. an employer may maintain the log and summary of occupational injuries and illnesses at a place other than the establishment. Each employer shall enter all recordable occupational injury and illness on the log and summary as early as practicable but no later than 6 working days after receiving information that a recordable case has occurred. For this purpose, the federal OSHA Form No. 200 or any private equivalent form may be used. OSHA Form No. 200 or its equivalent shall be completed in the detail provided in the form and instructions contained in OSHA Form No. 200. If an equivalent of OSHA Form No. 200 is used, such as a printout from data-processing equipment, the information shall be as readable and comprehensible to a person not familiar with the data-processing equipment as the OSHA Form No. 200 itself.

2. Any employer may maintain the log and summary of occupational injuries and illnesses at a place other than the establishment or by means of data-processing equipment, or both, under the following circumstances:

a. There is available at the place where the log and summary is maintained sufficient information to complete the log to a date within 6 working days after receiving information that a recordable case has occurred, as required by R614-1-8.C.

b. At each of the employer's establishments, there is available a copy of the log and summary which reflects separately the injury and illness experience of that establishment complete and current to a date within 45 calendar days.

D. Period covered.

Records shall be established on a calendar year basis.

E. Supplementary record.

In addition to the log and summary of occupational injuries and illnesses provided for under R614-1-8.C.1., each employer shall have available for inspection at each establishment within 6 working days after receiving information that a recordable case has occurred, a supplementary record for that establishment. The record shall be completed in the detail prescribed in the instructions accompanying federal OSHA Form No. 101. Workers' compensation, insurance, or other reports are acceptable alternative records if they contain the information required by the federal OSHA Form No. 101. If no acceptable alternative record is maintained for other purposes, Federal OSHA Form No. 101 shall be used or the necessary information shall be otherwise maintained.

F. Annual Summary.

1. Each employer shall post an annual summary of occupational injuries and illnesses for each establishment. This summary shall consist of a copy of the year's totals from the form OSHA Form No. 200 and the following information from that form: calendar year covered, company name, establishment address, certification signature, title, and date. An OSHA Form No. 200 shall be used in presenting the summary. If no injuries or illnesses occurred in the year, zeros must be entered in the totals line, and the form must be posted.

2. The summary shall be completed by February 1 beginning with calendar year 1979. The summary of 1977 calendar year's occupational injuries and illnesses shall be posted on OSHA form No. 102.

3. Each employer or the officer or employee of the employer who supervises the preparation of the log and summary of occupational injuries and illnesses, shall certify that the annual summary of occupational injuries and illnesses is true and complete. The certification shall be accomplished by affixing the signature of the employer, or the officer or employee of the employer who supervises the preparation of the annual summary of occupational injuries and illnesses, at the bottom of the last page of the log and summary or by appending a separate statement to the annual summary certifying that the annual summary is true and complete.

4. Each employer shall post a copy of the establishment's summary in each establishment in the same manner that notices are required to be posted under R614-1-7.B.1. The summary covering the previous calendar year shall be posted no later than February 1, and shall remain in place until March 1. For employees who do not primarily report or work at a single establishment, or who do not report to any fixed establishment on a regular basis, employers shall satisfy this posting requirement by presenting or mailing a copy of the summary portion of the log and summary during the month of February of the following year to each such employee who receives pay during that month. For multi-establishment employers where operations have closed down in some establishments during the calendar year, it will not be necessary to post summaries for those establishments.

a. Failure to post a copy of the establishment's annual summary may result in the issuance of citations and assessment of penalties pursuant to Sections 34A-6-302 and 34A-6-307 of the Act.

G. Retention of records.

1. Records provided for in R614-1-8.A.,E., and F. (including OSHA Form No. 200 and its predecessor OSHA

Forms No. 100 and No. 102) shall be retained in each establishment for 5 years following the end of the year to which they relate.

2. Preservation of records.

a. This section applies to each employer who makes, maintains or has access to employee exposure records or employee medical records.

b. "Employee exposure record" means a record of monitoring or measuring which contains qualitative or quantitative information indicative of employee exposures to toxic materials or harmful physical agents. This includes both individual exposure records and general research or statistical studies based on information collected from exposure records.

c. "Employee medical record" means a record which contains information concerning the health status of an employee or employees exposed or potentially exposed to toxic materials or harmful physical agents. These records may include, but are not limited to:

(1) The results of medical examinations and tests;

(2) Any opinions or recommendations of a physician or other health professional concerning the health of an employee or employees; and

(3) Any employee medical complaints relating to workplace exposure. Employee medical records include both individual medical records and general research or statistical studies based on information collected from medical records.

c. Preservation of records. Each employer who makes, maintains, or has access to employee exposure records or employee medical records shall preserve these records.

d. Availability of records. The employer shall make available, upon request to the Administrator, or a designee, and to the Director of the Division of Health, or a designee, all employee exposure records and employee medical records for examination and copying.

H. Access to records.

1. Records provided for in R614-1-8.A.,E., and F. shall be available for inspection and copying by Compliance Officers during any occupational safety and health inspection provided for under R614-1-7 and Section 34A-6-301 of the Act.

2. The log and summary of all recordable occupational injuries and illnesses (OSHA No. 200) (the log) provided for in R614-1-8.A. shall, upon request, be made available by the employer to any employee, former employee, and to their representatives for examination and copying in a reasonable manner and at reasonable times. The employee, former employee, and their representatives shall have access to the log for any establishment in which the employee is or has been employed.

3. Nothing in this section shall be deemed to preclude employees and employee representatives from collectively bargaining to obtain access to information relating to occupational injuries and illnesses in addition to the information made available under this section.

4. Access to the log provided under this section shall pertain to all logs retained under requirements of R614-1-8.G.

I. Reporting of fatality or accidents. (Refer to Utah Occupational Safety and Health Rule, R614-1-5.C.)

J. Falsification or failure to keep records or reports.

1. Section 34A-6-307 of the Act provides penalties for false information and recordkeeping.

2. Failure to maintain records or file reports required by this part, or in the details required by forms and instructions issued under this part, may result in the issuance of citations and assessment of penalties as provided for in Sections 34A-6-302 and 34A-6-307 of the Act.

K. Change of ownership.

Where an establishment has changed ownership, the employer shall be responsible for maintaining records and filing reports only for that period of the year during which he owned or operated such establishment. However, in the case of any change in ownership, the employer shall preserve those records, if any, of the prior ownership which are required to be kept under this Part. These records shall be retained at each establishment to which they relate, for the period or remainder thereof, required under R614-1-8.G.

L. Petitions for record-keeping exceptions.

1. Submission of petition. Any employer who wishes to maintain records in a manner different from that required by this part may submit a petition containing the information specified in R614-1-8.L.3. the Bureau of Labor Statistics of the U.S. Department of Labor.

2. Opportunity for comment. Affected employees or their representatives shall have an opportunity to submit written data, views, or arguments concerning the petition to the Administrator within 10 working days following the receipt of notice under R614-1-8.L.3.e.

3. Contents of petition. A petition filed under R614-1-8.L.1. shall include:

a. The name and address of the applicant;

b. The address of the places or employment involved.

c. Specifications of the reasons for seeking relief;

d. A description of the different record-keeping procedures which are proposed by the applicant;

e. A statement that the applicant has informed his affected employees of the petition by giving a copy thereof to them or to their authorized representative and by posting a statement giving a summary of the petition and by other appropriate means. A statement posted pursuant to this subparagraph shall be posted in each establishment in the same manner that notices are required to be posted under R614-1-7.B. The applicant shall also state that he has informed his affected employees of their rights under R614-1-8.L.2.

f. In the event an employer has more than one establishment he shall submit a list of the locations and the number of establishments in the state.

4. Additional notice, conferences.

a. In addition to the actual notice provided for in R614-1-8.L.3.e., the Administrator may provide such additional notice of the petition as he may deem appropriate.

b. The Administrator may also afford an opportunity to interested parties for informal conference or hearing concerning the petition.

5. Action. After review of the petition, and of any comments submitted in regard thereto, and upon completion of any necessary appropriate investigation concerning the petition, if the Administrator finds that the alternative procedure proposed will not hamper or interfere with the purposes of the Act and will provide equivalent information, he may grant the

petition subject to such conditions as he may determine appropriate.

6. Publication. Whenever any relief is granted to an applicant under this Act, notice of such relief, and the reasons therefore, shall be published in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act. The U.S. Department of Labor shall have been consulted and approval given prior to the granting of relief by the Administrator.

7. Revocation. Whenever any relief under this rule is sought to be revoked for any failure to comply with the conditions thereof, and opportunity for informal hearing or conference shall be afforded to the employers and affected employees, or their representatives. Except in cases of willfulness or where public safety or health requires otherwise, before the commencement of any such informal proceeding, the employer shall:

a. Be notified in writing of the facts or conduct which may warrant the action; and

b. Be given an opportunity to demonstrate or achieve compliance.

8. Compliance after submission of a petition or any delay by the Administrator, in acting upon a petition shall not relieve any employer from any obligation to comply with this Part. However, the Administrator shall give notice of the denial of any petition within a reasonable time.

M. Description of statistical program.

1. Section 34A-6-108 of the Act directs the Administrator to develop and maintain a program of collection, compilation, and analysis of occupational safety and health statistics. The program shall consist of periodic surveys of occupational injuries and illnesses.

2. The sample design encompasses probability procedures, detailed stratification by industry and size, and a systematic selection within Stratification. Stratification and sampling will be carried out in order to provide the most efficient sample for eventual state estimates. Some industries will be sampled more heavily than others depending on the injury rate level based on previous experience. The survey should produce adequate estimates for most four-digit Standard Industrial Classification (SIC) industries in manufacturing and for three-digit classification (SIC) in non-manufacturing. Full cooperation with the U. S. Department of Labor in statistical programs is intended.

N. Duties of employers.

1. Upon receipt of an Occupational Injuries and Illnesses Survey Form, the employer shall promptly complete the form in accordance with the instructions contained therein, and return it in accordance with the aforesaid instructions.

2. Employers of employees engaged in physically dispersed operations such as occur in construction, installation, repair or service activities who do not report to any fixed establishment on a regular basis but are subject to common supervision may satisfy the provisions of R614-1-8.C., E., and G. with respect to such employees by:

a. Maintaining the required records for each operation or group of operations which is subject to common supervision (field superintendent, field supervisor, etc.) in an established central place;

b. Having the address and telephone number of the central place available at each work-site; and

c. Having personnel available at the central place during normal business hours to provide information from the records maintained there by telephone and by mail.

R614-1-9. Rules of Practice for Temporary or Permanent Variance from the Utah Occupational Safety and Health Standards. (Also Adopted and Published as Chapter XXIII of the Utah Occupational Safety and Health Field Operations Manual.)

A. Scope.

1. This rule contains Rules of Practice for Administrative procedures to grant variances and other relief under Section 34A-6-202 of the Act. General information pertaining to employer-employee rights, obligations and procedures are included.

B. Application for, or petition against Variances and other relief.

1. The applicable parts of Section 34A-6-202 of the Act shall govern application and petition procedure.

2. Any employer or class of employers desiring a variance from a standard must make a formal written request including the following information:

a. The name and address of applicant;

b. The address of the place or places of employment involved;

c. A specification of the standard or portion thereof from which the applicant seeks a variance;

d. A statement by the applicant, supported by opinions from qualified persons having first-hand knowledge of the facts of the case, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefore;

e. A statement of the steps the applicant has taken and will take, with specific dates where appropriate, to protect employees against the hazard covered by the existing standard;

f. A statement of when the applicant expects to be able to comply with the standard and of what steps he has taken and will take, with specific dates where appropriate, to come into compliance with the standards (applies to temporary variances);

g. A statement of the facts the applicant would show to establish that (applies to newly promulgated standards);

(1) The applicant is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

(2) He is taking all available steps to safeguard his employees against the hazards covered by the standards; and

(3) He has an effective program for coming into compliance with the standard as quickly as practicable;

h. Any request for a hearing, as provided in this rule;

i. A statement that the applicant has informed his affected employees of the application for variance by giving a copy thereof to their authorized representative, posting a summary statement of the application at the place or places where notices to employees are normally posted specifying where a copy may be examined; and

j. A description of how affected employees have been

informed of their rights to petition the Administrator for a hearing.

3. The applicant shall designate the method he will use to safeguard his employees until a variance is granted or denied.

4. Whenever a proceeding on a citation or a related issue concerning a proposed penalty or period of abatement has been contested and is pending before an Administrative Law Judge or any subsequent review under the Administrative Procedures Act, until the completion of such proceeding, the Administrator may deny a variance application on a subject or an issue concerning a citation which has been issued to the employer.

C. Hearings.

1. The Administrator may conduct hearings upon application or petition in accordance with Section 34A-6-202(4) of the Act if:

a. Employee(s), the public, or other interested groups petition for a hearing; or

b. The Administrator deems it in the public or employee interest.

2. When a hearing is considered appropriate, the Administrator shall set the date, time, and place for such hearing. He shall provide timely notification to the applicant for variance and the petitioners. In the notice of hearing to the applicant, the applicant will be directed to notify his employees of the hearing.

3. Notice of hearings shall be published in the Administrative Rulemaking Bulletin. This shall include a statement that the application request may be inspected at the UOSH Division Office.

4. A copy of the Notification of Hearing along with other pertinent information shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

D. Inspection for Variance Application.

1. A variance inspection will be required by the Administrator or his designee prior to final determination of either acceptance or denial.

2. A variance inspection is a single purpose, pre-announced, non-compliance inspection and shall include employee or employer representative participation or interview where necessary.

E. Interim order.

1. The purpose of an interim order is to permit an employer to proceed in a non-standard operation while administrative procedures are being completed. Use of this interim procedure is dependent upon need and employee safety.

2. Following a variance inspection, and after determination and assurance that employees are to be adequately protected, the Administrator may immediately grant, in writing, an interim order. To expedite the effect of the interim order, it may be issued at the work-site by the Administrator. The interim order will remain in force pending completion of the administrative promulgation action and the formal granting or denying of a temporary/permanent variance as requested.

F. Decision of the Administrator.

1. The Administrator may deny the application if:

a. It does not meet the requirements of paragraph R614-1-8.B.;

b. It does not provide adequate safety in the workplace for affected employees; or

c. Testimony or information provided by the hearing or inspection does not support the applicant's request for variance as submitted.

2. Letters of notification denying variance applications shall be sent to the applicant, and will include posting requirements to inform employees, affected associations, and employer groups.

a. A copy of correspondence related to the denial request shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

b. The letter of denial shall be explicit in detail as to the reason(s) for such action.

3. The Administrator may grant the request for variances provided that:

a. Data supplied by the applicant, the UOSHA inspection and information and testimony affords adequate protection for the affected employee(s);

b. Notification of approval shall follow the pattern described in R614-1-9.C.2. and 3.;

c. Limitations, restrictions, or requirements which become part of the variance shall be documented in the letter granting the variance.

4. The Administrator's decision shall be deemed final subject to Section 34A-6-202(6).

G. Recommended Time Table for Variance Action.

1. Publication of agency intent to grant a variance. This includes public comment and hearing notification in the Utah Administrative Rulemaking Bulletin: within 30 days after receipt.

2. Public comment period: within 20 days after publication.

3. Public hearing: within 30 days after publication

4. Notification of U.S. Department of Labor Regional Administrator for OSHA: 10 days after agency publication of intent.

5. Final Order: 120 days after receipt of variance application if publication of agency intent is made.

6. Rejection of variance application without publication of agency intent: 20 days after receipt of application.

a. Notification of U.S. Department of Labor Regional Administrator for OSHA: 20 days after receipt of application.

H. Public Notice of Granted Variances, Tolerances, Exemptions, and Limitations.

1. Every final action granting variance, exemption, or limitation under this rule shall be published as required under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, and the time table set forth in R614-1-9.G.

I. Acceptance of federally Granted Variances.

1. Where a variance has been granted by the U.S. Department of Labor, Occupational Safety and Health Administration, following Federal Promulgation procedures, the Administrator shall take the following action:

a. Compare the federal OSHA standard for which the variance was granted with the equivalent UOSH standard.

b. Identify possible application in Utah.

c. If the UOSH standard under consideration for application of the variance has exactly or essentially the same intent as the federal standard and there is the probability of a multi-state employer doing business in Utah, then the

Administrator shall accept the variance (as federally accepted) and promulgate it for Utah under the provisions of Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

d. If the variance has no apparent application to Utah industry, or to a multi-state employer in Utah, or if it conflicts with Utah Legislative intent, or established policy or procedure, the federal variance shall not be accepted. In such case, the Regional Administrator will be so notified.

J. Revocation of a Variance.

1. Any variance (temporary or permanent) whether approved by the state or one accepted by State based on Federal approval, may be revoked by the Administrator if it is determined through on-site inspection that:

a. The employer is not complying with provisions of the variance as granted;

b. Adequate employee safety is not afforded by the original provisions of the variance; or

c. A more stringent standard has been promulgated, is in force, and conflicts with prior considerations given for employee safety.

2. A federally approved national variance may be revoked by the state for a specific work-site or place of employment within the state for reasons cited in R614-1-9.J.1. Such revocations must be in writing and give full particulars and reasons prompting the action. Full rights provided under the law, such as hearings, etc., must be afforded the employer.

3. Normally, permanent variances may be revoked or changed only after being in effect for at least six months.

K. Coordination.

1. All variances issued by the Administrator will be coordinated with the U.S. Department of Labor, OSHA to insure consistency and avoid improper unilateral action.

R614-1-10. Discrimination.

A. General.

1. The Act provides, among other things, for the adoption of occupational safety and health standards, research and development activities, inspections and investigations of work places, and record keeping requirements. Enforcement procedures initiated by the Commission; review proceedings as required by Title 63, Chapter 46b, Administrative Procedures Act; and judicial review are provided by the Act.

2. This rule deals essentially with the rights of employees afforded under section 34A-6-203 of the Act. Section 34A-6-203 of the Act prohibits reprisals, in any form, against employees who exercise rights under the Act.

3. The purpose is to make available in one place interpretations of the various provisions of Section 34A-6-203 of the Act which will guide the Administrator in the performance of his duties thereunder unless and until otherwise directed by authoritative decisions of the courts, or concluding, upon reexamination of an interpretation, that it is incorrect.

B. Persons prohibited from discriminating.

Section 34A-6-203 defines employee protections under the Act, because the employee has exercised rights under the Act. Section 34A-6-103(11) of the Act defines "person". Consequently, the prohibitions of Section 34A-6-203 are not limited to actions taken by employers against their own employees. A person may be chargeable with discriminatory action against an employee of another person. Section 34A-6-203 would extend to such entities as organizations representing employees for collective bargaining purposes, employment agencies, or any other person in a position to discriminate against an employee. (See, Meek v. United States, F. 2d 679 (6th Cir., 1943); Bowe v. Judson C. Burnes, 137 F 2d 37 (3rd Cir., 1943).)

C. Persons protected by section 34A-6-203.

1. All employees are afforded the full protection of Section 34A-6-203. For purposes of the Act, an employee is defined in Section 34A-6-103(6). The Act does not define the term "employee". However, the broad remedial nature of this legislation demonstrates a clear intent that the existence of an employment relationship, for purposes of Section 34A-6-203 to be based upon economic realities rather than upon common law doctrines and concepts. (See, U.S. v. Silk, 331 U.S. 704 (1947); Rutherford Food Corporation v. McComb, 331 U.S. 722 (1947).)

2. For purposes of Section 34A-6-203, even an applicant for employment could be considered an employee. (See, NLRB v. Lamar Creamery, 246 F. 2d 8 (5th Cir., 1957).) Further, because Section 34A-6-203 speaks in terms of any employee, it is also clear that the employee need not be an employee of the discriminator. The principal consideration would be whether the person alleging discrimination was an "employee" at the time of engaging in protected activity.

3. In view of the definitions of "employer" and "employee" contained in the Act, employees of a State or political subdivision thereof would be within the coverage of Section 34A-6-203.

D. Unprotected activities distinguished.

1. Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The proscriptions of Section 34A-6-203 apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in activities protected by the Act does not automatically render him immune from discharge or discipline for legitimate reasons, or from adverse action dictated by non-prohibited considerations. (See, NLRB v. Dixie Motor Coach Corp., 128 F. 2d 201 (5th Cir., 1942).)

2. To establish a violation of Section 34A-6-203, the employee's engagement in protected activity need not be the sole consideration behind discharge or other adverse action. If protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place "but for" engagement in protected activity, Section 34A-6-203 has been violated. (See, Mitchell v. Goodyear Tire and Rubber Co., 278 F. 2d 562 (8th Cir., 1960); Goldberg v. Bama Manufacturing, 302 F. 2d 152 (5th Cir., 1962).) Ultimately, the issue as to whether a discharge was because of protected activity will have to be determined on the basis of the facts in the particular case.

E. Specific protections - complaints under or related to the Act.

1. Discharge of, or discrimination against an employee because the employee has filed "any complaint under or related to this Act" is prohibited by Section 34A-6-203. An example of a complaint made "under" the Act would be an employee

request for inspection pursuant to Section 34A-6-301(6). However, this would not be the only type of complaint protected by Section 34A-6-203. The range of complaints "related to" the Act is commensurate with the broad remedial purposes of this legislation and the sweeping scope of its application, which entails the full extent of the commerce power. ((See Cong. Rec., vol. 116 P. 42206 December 17, 1970).)

2. Complaints registered with Federal agencies which have the authority to regulate or investigate occupational safety and health conditions are complaints "related to" this Act. Likewise, complaints made to State or local agencies regarding occupational safety and health conditions would be "related to" the Act. Such complaints, however, must relate to conditions at the workplace, as distinguished from complaints touching only upon general public safety and health.

3. Further, the salutary principles of the Act would be seriously undermined if employees were discouraged from lodging complaints about occupational safety and health matters with their employers. Such complaints to employers, if made in good faith, therefore would be related to the Act, and an employee would be protected against discharge or discrimination caused by a complaint to the employer.

F. Proceedings under or related to the act.

1. Discharge of, or discrimination against, any employee because the employee has exercised the employee's rights under or related to this Act is also prohibited by Section 34A-6-203. Examples of proceedings which would arise specifically under the Act would be inspections of work-sites under Section 34A-6-301 of the Act, employee contest of abatement date under Section 34A-6-303 of the Act, employee initiation of proceedings for promulgation of an occupational safety and health standard under Section 34A-6-202 of the Act and Title 63, Chapter 46a, employee application for modification of revocation of a variance under Section 34A-6-202(4)(c) of the Act and R614-1-9., employee judicial challenge to a standard under Section 34A-6-202(6) of the Act, and employee appeal of an order issued by an Administrative Law Judge, Commissioner, or Appeals Board under Section 34A-6-304. In determining whether a "proceeding" is "related to" the Act, the considerations discussed in R614-1-10.G. would also be applicable.

2. An employee need not himself directly institute the proceedings. It is sufficient if he sets into motion activities of others which result in proceedings under or related to the Act.

G. Testimony.

Discharge of, or discrimination against, any employee because the employee "has testified or is about to testify" in proceedings under or related to the Act is also prohibited by Section 34A-6-203. This protection would of course not be limited to testimony in proceedings instituted or caused to be instituted by the employee, but would extend to any statements given in the course of judicial, quasi-judicial, and administrative proceedings, including inspections, investigations, and administrative rulemaking or adjudicative functions. If the employee is giving or is about to give testimony in any proceeding under or related to the Act, he would be protected against discrimination resulting from such testimony.

H. Exercise of any right afforded by the Act.

1. In addition to protecting employees who file complaints, institute proceedings under or related to the Act it also prohibited by Section 34A-6-203 discrimination occurring because of the exercise "of any right afforded by this Act." Certain rights are explicitly provided in the Act; for example, there is a right to participate as a party in enforcement proceedings (34A-6-303). Certain other rights exist by necessary implications. For example, employees may request information from the Utah Occupational Safety and Health Administration; such requests would constitute the exercise of a right afforded by the Act. Likewise, employees interviewed by agents of the Administrator in the course of inspections or investigations could not subsequently be discriminated against because of their cooperation.

2. Review of the Act and examination of the legislative history discloses that, as a general matter, there is no right afforded by the Act which would entitle employees to walk off the job because of potential unsafe conditions at the workplace. Hazardous conditions which may be violative of the Act will ordinarily be corrected by the employer, once brought to his attention. If corrections are not accomplished, or if there is dispute about the existence of a hazard, the employee will normally have opportunity to request inspection of the workplace pursuant to Section 34A-6-301 of the Act, or to seek the assistance of other public agencies which have responsibility in the field of safety and health. Under such circumstances, therefore, an employer would not ordinarily be in violation of Section 34A-6-203 by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety or health hazards.

a. Occasions might arise when an employee is confronted with a choice between not performing assigned tasks or subjecting himself to serious injury or death arising from a hazardous condition at the workplace. If the employee, with no reasonable alternative, refuses in good faith to expose himself to the dangerous condition, he would be protected against subsequent discrimination. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from his employer, and been unable to obtain, a correction of the dangerous condition.

I. Procedures - Filing of complaint for discrimination.

1. Who may file. A complaint of Section 34A-6-203 discrimination may be filed by the employee himself, or by a representative authorized to do so on his behalf.

2. Nature of filing. No particular form of complaint is required.

3. Place of filing. Complaint should be filed with the Administrator, Division of Occupational Safety and Health, Labor Commission, 160 East 300 South, Salt Lake City, Utah 84114-6650, Telephone 530-6901.

4. Time for filing.

a. Section 34A-6-203(2)(b) provides protection for an employee who believes that he has been discriminated against.

b. A major purpose of the 30-day period in this provision

is to allow the Administrator to decline to entertain complaints which have become stale. Accordingly, complaints not filed within 30 days of an alleged violation will ordinarily be presumed to be untimely.

c. However, there may be circumstances which would justify tolling of the 30-day period on recognized equitable principles or because of strongly extenuating circumstances, e.g., where the employer has concealed, or misled the employee regarding the grounds for discharge or other adverse action; where the employee has, within the 30-day period, resorted in good faith to grievance-arbitration proceedings under a collective bargaining agreement or filed a complaint regarding the same general subject with another agency; where the discrimination is in the nature of a continuing violation. In the absence of circumstances justifying a tolling of the 30-day period, untimely complaints will not be processed.

J. Notification of administrator's determination.

The Administrator is to notify a complainant within 90 days of the complaint of his determination whether prohibited discrimination has occurred. This 90-day provision is considered directory in nature. While every effort will be made to notify complainants of the Administrator's determination within 90 days, there may be instances when it is not possible to meet the directory period set forth in this section.

K. Withdrawal of complaint.

Enforcement of the provisions of Section 34A-6-203 is not only a matter of protecting rights of individual employees, but also of public interest. Attempts by an employee to withdraw a previously filed complaint will not necessarily result in termination of the Administrator's investigation. The Administrator's jurisdiction cannot be foreclosed as a matter of law by unilateral action of the employee. However, a voluntary and uncoerced request from a complainant to withdraw his complaint will be given careful consideration and substantial weight as a matter of policy and sound enforcement procedure.

L. Arbitration or other agency proceedings.

1. An employee who files a complaint under Section 34A-6-203(2) of the Act may also pursue remedies under grievance arbitration proceedings in collective bargaining agreements. In addition, the complainant may concurrently resort to other agencies for relief, such as the National Labor Relations Board. The Administrator's jurisdiction to entertain Section 34A-6-203 complaints, to investigate, and to determine whether discrimination has occurred, is independent of the jurisdiction of other agencies or bodies. The Administrator may file action in district court regardless of the pendency of other proceedings.

2. However, the Administrator also recognizes the policy favoring voluntary resolution of disputes under procedures in collective bargaining agreements. (See, e.g., Boy's Market, Inc. v. Retail Clerks, 398 U.S. 235 (1970); Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965); Carey v. Westinghouse Electric Co., 375 U.S. 261 (1964); Collier Insulated Wire, 192 NLRB No. 150 (1971).) By the same token, due deference should be paid to the jurisdiction of other forums established to resolve disputes which may also be related to Section 34A-6-203 complaints.

3. Where a complainant is in fact pursuing remedies other than those provided by Section 34A-6-203, postponement of the Administrator's determination and deferral to the results of such proceedings may be in order. (See, Burlington Truck Lines, Inc., v. U.S., 371 U.S. 156 (1962).)

4. Postponement of determination. Postponement of determination would be justified where the rights asserted in other proceedings are substantially the same as rights under Section 34A-6-203 and those proceedings are not likely to violate the rights guaranteed by Section 34A-6-203. The factual issues in such proceedings must be substantially the same as those raised by Section 34A-6-203 complaint, and the forum hearing the matter must have the power to determine the ultimate issue of discrimination. (See, Rios v. Reynolds Metals Co., F. 2d (5th Cir., 1972), 41 U.S.L.W. 1049 (October 10, 1972): Newman v. Avco Corp., 451 F. 2d 743 (6th Cir., 1971).)

5. Deferral to outcome of other proceedings. A determination to defer to the outcome of other proceedings initiated by a complainant must necessarily be made on a case-to-case basis, after careful scrutiny of all available information. Before deferring to the results of other proceedings, it must be clear that those proceedings dealt adequately with all factual issues, that the proceedings were fair, regular, and free of procedural infirmities, and that the outcome of the proceedings was not repugnant to the purpose and policy of the Act. In this regard, if such other actions initiated by a complainant are dismissed without adjudicative hearing thereof, such dismissal will not ordinarily be regarded as determinative of the Section 34A-6-203 complaint.

M. Employee refusal to comply with safety rules.

Employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the employer in furtherance of the Act are not exercising any rights afforded by the Act. Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations, will not ordinarily be regarded as discriminatory action prohibited by Section 34A-6-203. This situation should be distinguished from refusals to work, as discussed in R614-1-10.H.

R614-1-11. Rules of Agency Practice and Procedure Concerning UOSH Access to Employee Medical Records.

A. Policy.

UOSH access to employee medical records will in certain circumstances be important to the agency's performance of its statutory functions. Medical records, however, contain personal details concerning the lives of employees. Due to the substantial personal privacy interests involved, UOSH authority to gain access to personally identifiable employee medical information will be exercised only after the agency has made a careful determination of its need for this information, and only with appropriate safeguards to protect individual privacy. Once this information is obtained, UOSH examination and use of it will be limited to only that information needed to accomplish the purpose for access. Personally identifiable employee medical information will be retained by UOSH only for so long as needed to accomplish the purpose for access, will be kept secure while being used, and will not be disclosed to other agencies or members of the public except in narrowly defined circumstances. This section establishes procedures to implement these policies.

B. Scope.

1. Except as provided in paragraphs R614-1-11.B.3. through 6. below, this rule applies to all requests by UOSH personnel to obtain access to records in order to examine or copy personally identifiable employee medical information, whether or not pursuant to the access provision of R614-1-12.D.

2. For the purposes of this rule, "personally identifiably employee medical information" means employee medical information accompanied by either direct identifiers (name, address, social security number, payroll number, etc.) or by information which could reasonably be used in the particular circumstances indirectly to identify specific employees (e.g., exact age, height, weight, race, sex, date of initial employment, job title, etc.).

3. This rule does not apply to UOSH access to, or the use of, aggregate employee medical information or medical records on individual employees which is not a personally identifiable form. This section does not apply to records required by R614-1-8 to death certificates, or to employee exposure records, including biological monitoring records defined by R614-1-3.M. or by specific occupational safety and health standards as exposure records.

4. This rule does not apply where UOSH compliance personnel conduct an examination of employee medical records solely to verify employer compliance with the medical surveillance record keeping requirements of an occupational safety and health standard, or with R614-1-12. An examination of this nature shall be conducted on-site and, if requested, shall be conducted under the observation of the record holder. The UOSH compliance personnel shall not record and take off-site any information from medical records other than documentation of the fact of compliance or non-compliance.

5. This rule does not apply to agency access to, or the use of, personally identifiable employee medical information obtained in the course of litigation.

6. This rule does not apply where a written directive by the Administrator authorizes appropriately qualified personnel to conduct limited reviews of specific medical information mandated by an occupational safety and health standard, or of specific biological monitoring test results.

7. Even if not covered by the terms of this rule, all medically related information reported in a personally identifiable form shall be handled with appropriate discretion and care befitting all information concerning specific employees. There may, for example, be personal privacy interests involved which militate against disclosure of this kind of information to the public.

C. Responsible persons.

1. UOSH Administrator. The Administrator of the Division of Occupational Safety and Health of the Labor Commission shall be responsible for the overall administration and implementation of the procedures contained in this rule, including making final UOSH determinations concerning:

a. Access to personally identifiable employee medical information, and

b. Inter-agency transfer or public disclosure of personally identifiable employee medical information.

2. UOSH Medical Records Officer. The Administrator shall designate a UOSH official with experience or training in the evaluation, use, and privacy protection of medical records to be the UOSH Medical Records Officer. The UOSH Medical Records Officer shall report directly to the Administrator on matters concerning this section and shall be responsible for:

a. Making recommendations to the Administrator as to the approval or denial of written access orders.

b. Assuring that written access orders meet the requirements of paragraphs R614-1-11.D.2. and 3. of this rule.

c. Responding to employee, collective bargaining agent, and employer objections concerning written access orders.

d. Regulating the use of direct personal identifiers.

e. Regulating internal agency use and security of personally identifiable employee medical information.

f. Assuring that the results of agency analyses of personally identifiable medical information are, where appropriate, communicated to employees.

g. Preparing an annual report of UOSH's experience under this rule.

h. Assuring that advance notice is given of intended inter-agency transfers or public disclosures.

3. Principal UOSH Investigator. The Principal UOSH Investigator shall be the UOSH employee in each instance of access to personally identifiable employee medical information who is made primarily responsible for assuring that the examination and use of this information is performed in the manner prescribed by a written access order and the requirements of this section. When access is pursuant to a written access order, the Principal UOSH Investigator shall be professionally trained in medicine, public health, or allied fields (epidemiology, toxicology, industrial hygiene, bio-statistics, environmental health, etc.)

D. Written access orders.

1. Requirement for written access order. Except as provided in paragraph R614-1-11.D.4. below, each request by a UOSH representative to examine or copy personally identifiable employee medical information contained in a record held by an employer or other record holder shall be made pursuant to a written access order which has been approved by the Administrator upon the recommendation of the UOSH Medical Records Officer. If deemed appropriate, a written access order may constitute, or be accompanied by an administrative subpoena.

2. Approval criteria for written access order. Before approving a written access order, the Administrator and the UOSH Medical Records Officer shall determine that:

a. The medical information to be examined or copied is relevant to a statutory purpose and there is a need to gain access to this personally identifiable information.

b. The personally identifiable medical information to be examined or copied is limited to only that information needed to accomplish the purpose for access, and

c. The personnel authorized to review and analyze the personally identifiable medical information are limited to those who have a need for access and have appropriate professional qualifications.

3. Content of written access order. Each written access order shall state with reasonable particularity:

a. The statutory purposes for which access is sought.

b. The general description of the kind of employee medical information that will be examined and why there is a need to

examine personally identifiable information.

c. Whether medical information will be examined on-site, and what type of information will be copied and removed off-site.

d. The name, address, and phone number of the Principal UOSH Investigator and the names of any other authorized persons who are expected to review and analyze the medical information.

e. The name, address, and phone number of the UOSH Medical Records Officer, and

f. The anticipated period of time during which UOSH expects to retain the employee medical information in a personally identifiable form.

4. Special situations. Written access orders need not be obtained to examine or copy personally identifiable employee medical information under the following circumstances:

a. Specific written consent. If the specific written consent of an employee is obtained pursuant to R614-1-12.D., and the agency or an agency employee is listed on the authorization as the designated representative to receive the medical information, then a written access order need not be obtained. Whenever personally identifiable employee medical information is obtained through specific written consent and taken off-site, a Principal UOSH Investigator shall be promptly named to assure protection of the information, and the UOSH Medical Records Officer shall be notified of this person's identity. The personally identifiable medical information obtained shall thereafter be subject to the use and security requirements of paragraphs R614-1-11.H.

b. Physician consultations. A written access order need not be obtained where a UOSH staff or contract physician consults with an employer's physician concerning an occupational safety or health issue. In a situation of this nature, the UOSH physician may conduct on-site evaluation of employee medical records in consultation with the employer's physician, and may make necessary personal notes of his or her findings. No employee medical records however, shall be taken off-site in the absence of a written access order or the specific written consent of an employee, and no notes of personally identifiable employee medical information made by the UOSH physician shall leave his or her control without the permission of the UOSH Medical Records Officer.

E. Presentation of written access order and notice to employees.

1. The Principal UOSH Investigator, or someone under his or her supervision, shall present at least two (2) copies each of the written access order and an accompanying cover letter to the employer prior to examining or obtaining medical information subject to a written access order. At least one copy of the written access order shall not identify specific employees by direct personal identifier. The accompanying cover letter shall summarize the requirements of this section and indicate that questions or objections concerning the written access order may be directed to the Principal UOSH Investigator or to the UOSH Medical Records Officer.

2. The Principal UOSH Investigator shall promptly present a copy of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to each collective bargaining agent representing employees whose medical records are subject to the written access order.

3. The Principal UOSH Investigator shall indicate that the employer must promptly post a copy of the written access order which does not identify specific employees by direct personal identifier, as well as post its accompanying cover letter.

4. The Principal UOSH Investigator shall discuss with any collective bargaining agent and with the employer the appropriateness of individual notice to employees affected by the written access order. Where it is agreed that individual notice is appropriate, the Principal UOSH Investigator shall promptly provide to the employer an adequate number of copies of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to enable the employer either to individually notify each employee or to place a copy in each employee's medical file.

F. Objections concerning a written access order. All employees, collective bargaining agents, and employer written objections concerning access to records pursuant to a written access order shall be transmitted to the UOSH Medical Records Officer. Unless the agency decides otherwise, access to the record shall proceed without delay notwithstanding the lodging of an objection. The UOSH Medical Records Officer shall respond in writing to each employee's and collective bargaining agent's written objection to UOSH access. Where appropriate, the UOSH Medical Records Officer may revoke a written access order and direct that any medical information obtained by it by returned to the original record holder or destroyed. The principal UOSH Investigator shall assure that such instructions by the UOSH Medical Records Officer are promptly implemented.

G. Removal of direct personal identifiers. Whenever employees medical information obtained pursuant to a written access order is taken off-site with direct personal identifiers included, the Principal UOSH Investigator shall, unless otherwise authorized by the UOSH Medical Records Officer, promptly separate all direct personal identifiers from the medical information, and code the medical information and the list of direct identifiers with a unique identifying number of each employee. The medical information with its numerical code shall thereafter be used and kept secured as though still in a directly identifiable form. The Principal UOSH Investigator shall also hand deliver or mail the list of direct personal identifiers with their corresponding numerical codes to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall thereafter limit the use and distribution of the list of coded identifiers to those with a need to know its contents.

H. Internal agency use of personally identifiable employee medical information.

1. The Principal UOSH Investigator shall in each instance of access be primarily responsible for assuring that personally identifiable employee medical information is used and kept secured in accordance with this section.

2. The Principal UOSH Investigator, the UOSH Medical Records Officer, the Administrator, and any other authorized person listed on a written access order may permit the examination or use of personally identifiable employee medical information by agency employees and contractors who have a

need for access, and appropriate qualifications for the purpose for which they are using the information. No UOSH employee or contractor is authorized to examine or otherwise use personally identifiable employee medical information unless so permitted.

3. Where a need exists, access to personally identifiable employee medical information may be provided to attorneys in the office of the State Attorney General, and to agency contractors who are physicians or who have contractually agreed to abide by the requirements of this section and implementing agency directives and instructions.

4. UOSH employees and contractors are only authorized to use personally identifiable employee medical information for the purposes for which it was obtained, unless the specific written consent of the employee is obtained as to a secondary purpose, or the procedures of R614-1-11.D. through G. are repeated with respect to the secondary purpose.

5. Whenever practicable, the examination of personally identifiable employee medical information shall be performed on-site with a minimum of medical information taken off-site in a personally identifiable form.

I. Security procedures.

1. Agency files containing personally identifiable employee medical information shall be segregated from other agency files. When not in active use, files containing this information shall be kept secured in a locked cabinet or vault.

2. The UOSH Medical Records Officer and the Principal UOSH Investigator shall each maintain a log of uses and transfers of personally identifiable employee medical information and lists of coded direct personal identifiers, except as to necessary uses by staff under their direct personal supervision.

3. The photocopying or other duplication of personally identifiable employee medical information shall be kept to the minimum necessary to accomplish the purposes for which the information was obtained.

4. The protective measures established by this rule apply to all worksheets, duplicate copies, or other agency documents containing personally identifiable employee medical information.

5. Intra-agency transfers of personally identifiable employee medical information shall be by hand delivery, United States mail, or equally protective means. Inter-office mailing channels shall not be used.

J. Retention and destruction of records.

1. Consistent with UOSH records disposition programs, personally identifiable employee medical information and lists of coded direct personal identifiers shall be destroyed or returned to the original record holder when no longer needed for the purposes for which they were obtained.

2. Personally identifiable employee medical information which is currently not being used actively but may be needed for future use shall be transferred to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall conduct an annual review of all centrally-held information to determine which information is no longer needed for the purposes for which it was obtained.

K. Results of an agency analysis using personally identifiable employee medical information.

1. The UOSH Medical Records Officer shall, as appropriate, assure that the results of an agency analysis using personally identifiable employee medical information are communicated to the employees whose personal medical information was used as a part of the analysis.

2. Annual report. The UOSH Medical Records Officer shall on an annual basis review UOSH's experience under this section during the previous year, and prepare a report to the UOSH Administrator which shall be made available to the public. This report shall discuss:

a. The number of written access orders approved and a summary of the purposes for access;

b. The nature and disposition of employee; collective bargaining agent, and employer written objections concerning UOSH access to personally identifiable employee medical information; and

c. The nature and disposition of requests for inter-agency transfer or public disclosure of personally identifiable employee medical information.

L. Inter-agency transfer and public disclosure.

1. Personally identifiable employee medical information shall not be transferred to another agency or office outside of UOSH (other than to The Attorney General's Office) or disclosed to the public (other than to the affected employee or the original record holder) except when required by law or when approved by the Administrator.

2. Except as provided in paragraph R614-1-11.L.3. below, the Administrator shall not approve a request for an inter-agency transfer of personally identifiable employee medical information, which has not been consented to by the affected employees, unless the request is by a public health agency which:

a. Needs the requested information in a personally identifiable form for a substantial public health purpose;

b. Will not use the requested information to make individual determinations concerning affected employees which could be to their detriment;

c. Has regulations or established written procedures providing protection for personally identifiable medical information substantially equivalent to that of this section; and

d. Satisfies an exemption to the Privacy Act to the extent that the Privacy Act applies to the requested information (See 5 U.S.C. 552a(b); 29 CFR 70a.3).

3. Upon the approval of the Administrator, personally identifiable employee medical information may be transferred to:

a. The National Institute for Occupational Safety and Health (NIOSH).

b. The Department of Justice when necessary with respect to a specific action under the federal Occupational Safety and Health Act of 1970 and Utah Occupational Safety and Health Act of 1973.

4. The Administrator shall not approve a request for public disclosure of employee medical information containing direct personal identifiers unless there are compelling circumstances affecting the health or safety of an individual.

5. The Administrator shall not approve a request for public disclosure of employee medical information which contains information which could reasonably be used indirectly to

identify specific employees when the disclosure would constitute a clearly unwarranted invasion of personal privacy.

6. Except as to inter-agency transfers to NIOSH or the State Attorney General's Office, the UOSH Medical Records Officer shall assure that advance notice is provided to any collective bargaining agent representing affected employees and to the employer on each occasion that UOSH intends to either transfer personally identifiable employee medical information to another agency or disclose it to a member of the public other than to an affected employee. When feasible, the UOSH Medical Records Officer shall take reasonable steps to assure that advance notice is provided to affected employees when the employee medical information to be released or disclosed contains direct personal identifiers.

M. Effective date.

This rule shall become effective on January 15, 1981.

R614-1-12. Access to Employee Exposure and Medical Records.

A. Purpose.

To provide employees and their designated representatives a right of access to relevant exposure and medical records, and to provide representatives of the Administrator a right of access to these records in order to fulfill responsibilities under the Utah Occupational Safety and Health Act. Access by employees, their representatives, and the Administrator is necessary to yield both direct and indirect improvements in the detection, treatment, and prevention of occupational disease. Each employer is responsible for assuring compliance with this Rule, but the activities involved in complying with the access to medical records provisions can be carried out, on behalf of the employer, by the physician or other health care personnel in charge of employee medical records. Except as expressly provided, nothing in this Rule is intended to affect existing legal and ethical obligations concerning the maintenance and confidentiality of employee medical information, the duty to disclose information to a patient/employee or any other aspect of the medical-care relationship, or affect existing legal obligations concerning the protection of trade secret information.

B. Scope.

1. This rule applies to each general industry, maritime, and construction employer who makes, maintains, contracts for, or has access to employee exposure or medical records, or analyses thereof, pertaining to employees exposed to toxic substances or harmful physical agents.

2. This rule applies to all employee exposure and medical records, and analyses thereof, of employees exposed to toxic substances or harmful physical agents, whether or not the records are related to specific occupational safety and health standards.

3. This rule applies to all employee exposure and medical records, and analyses thereof, made or maintained in any manner, including on an in-house or contractual (e.g., fee-for-service) basis. Each employer shall assure that the preservation and access requirements of this rule are complied with regardless of the manner in which records are made or maintained.

C. Preservation of records.

1. Unless a specific occupational safety and health standard provides a different period of time, each employer shall assure the preservation and retention of records as follows:

a. Employee medical records. Each employee medical record shall be preserved and maintained for a least the duration of employment plus thirty (30) years, except that health insurance claims records maintained separately from the employer's medical program and its records need not be retained for any specified period.

b. Employee exposure records. Each employee exposure record shall be preserved and maintained for at least thirty (30) years, except that:

(1) Background data to environmental (workplace) monitoring or measuring, such a laboratory reports and worksheets, need only be retained for one (1) year so long as the sampling results, the collection methodology (sampling plan), a description of the analytical and mathematical methods used, and a summary of other background data relevant to interpretation of the results obtained, are retained for at least thirty (30) years; and

(2) Material safety data sheets and paragraph R614-1-3.M.4. records concerning the identity of a substance or agent need not be retained for any specified period as long as some record of the identity (chemical name if known) of the substance or agent, where it was used, and when it was used is retained for at least thirty (30) years; and

c. Analyses using exposure or medical records. Each analysis using exposure or medical records shall be preserved and maintained for at least thirty (30) years.

2. Nothing in this rule is intended to mandate the form, manner, or process by which an employer preserves a record so long as the information contained in the record is preserved and retrievable, except that X-ray films shall be preserved in their original state.

D. Access to records.

1. Whenever an employee or designated representative requests access to a record, the employer shall assure that access is provided in a reasonable time, place, and manner, but in no event later than fifteen (15) days after the request for access is made.

2. Whenever an employee or designated representative requests a copy of a record, the employer shall, within the period of time previously specified, assure that either:

a. A copy of the record is provided without cost to the employee or representative;

b. The necessary mechanical copying facilities (e.g., photocopying) are made available without cost to the employee or representative for copying the record; or

c. The record is loaned to the employee or representative for a reasonable time to enable a copy to be made.

3. Whenever a record has been previously provided without cost to an employee or designated representative, the employer may charge reasonable, non-discriminatory administrative costs (i.e., search and copy expenses but not including overhead expenses) for a request by the employee or designated representative for additional copies of the record, except that:

a. An employer shall not charge for an initial request for a copy of new information that has been added to a record

which was previously provided; and

b. An employer shall not charge for an initial request by a recognized or certified collective bargaining agent for a copy of an employee exposure record or an analysis using exposure or medical records.

4. Nothing in this rule is intended to preclude employees and collective bargaining agents from collectively bargaining to obtain access to information in addition to that available under this rule.

5. Employee and designated representative access.

a. Employee exposure records. Each employer shall, upon request, assure the access of each employee and designated representative to employee exposure records relevant to the employee. For the purpose of this rule exposure records relevant to the employee consist of:

(1) Records of the employee's past or present exposure to toxic substances or harmful physical agents,

(2) Exposure records of other employees with past or present job duties or working conditions related to or similar to those of the employee,

(3) Records containing exposure information concerning the employee's workplace or working conditions, and

(4) Exposure records pertaining to workplaces or working conditions to which the employee is being assigned or transferred.

b. Employee medical records.

(1) Each employer shall, upon request, assure the access of each employee to employee medical records of which the employee is the subject, except as provided in R614-1-12.D.4.

(2) Each employer shall, upon request, assure the access of each designated representative to the employee medical records of any employee who has given the designated representative specific written consent. R614-1-12A., Appendix A to R614-1-12., contains a sample form which may be used to establish specific written consent for access to employee medical records.

(3) Whenever access to employee medical records is requested, a physician representing the employer may recommend that the employee or designated representative:

(a) Consult with the physician for the purposes of reviewing and discussing the records requested;

(b) Accept a summary of material facts and opinions in lieu of the records requested;, or

(c) Accept release of the requested records only to a physician or other designated representative.

(4) Whenever an employee requests access to his or her employee medical records, and a physician representing the employer believes that direct employee access to information contained in the records regarding a specific diagnosis of a terminal illness or a psychiatric condition could be detrimental to the employees health, the employer may inform the employee that access will only be provided to a designated representative of the employee having specific written consent, and deny the employee's request for direct access to this information only. Where a designated representative with specific written consent requests access to information so withheld, the employer shall assure the access of the designated representative to this information, even when it is known that the designated representative will give the information to the employee.

(5) Nothing in this rule precludes physician, nurse, or other responsible health care personnel maintaining employee medical records from deleting from requested medical records the identity of a family member, personal friend, or fellow employee who has provided confidential information concerning an employee's health status.

c. Analysis using exposure or medical records.

(1) Each employer shall, upon request, assure the access of each employee and designated representative to each analysis using exposure or medical records concerning the employee's working conditions or workplace.

(2) Whenever access is requested to an analysis which reports the contents of employee medical records by either direct identifier (name, address, social security number, payroll number, etc.) or by information which could reasonably be used under the circumstances indirectly to identify specific employees (exact age, height, weight, race, sex, date of initial employment, job title, etc.) the employer shall assure that personal identifiers are removed before access is provided. If the employer can demonstrate that removal of personal identifiers from an analysis is not feasible, access to the personally identifiable portions of analysis need not be provided.

(3) UOSH access.

(a) Each employer shall, upon request, assure the immediate access of representatives of the Administrator to employee exposure and medical records and to analysis using exposure or medical records. Rules of agency practice and procedure governing UOSH access to employee medical records are contained in R614-1-8.

(b) Whenever UOSH seeks access to personally identifiable employee medical information by presenting to the employer a written access order pursuant to R614-1-8, the employer shall prominently post a copy of the written access order and its accompanying cover letter for at least fifteen (15) working days.

E. Trade Secrets.

1. Except as provided in paragraph R614-1-12.E.2., nothing in this rule precludes an employer from deleting from records requested by an employee or designated representative any trade secret data which discloses manufacturing processes, or discloses the percentage of a chemical substance in a mixture, as long as the employee or designated representative is notified that information has been deleted. Whenever deletion of trade secret information substantially impairs evaluation of the place where or the time when exposure to a toxic substance or harmful physical agent occurred, the employer shall provide alternative information which is sufficient to permit the employee to identify where and when exposure occurred.

2. Notwithstanding any trade secret claims, whenever access to records is requested, the employer shall provide access to chemical or physical agent identities including chemical names, levels of exposure, and employee health status data contained in the requested records.

3. Whenever trade secret information is provided to an employee or designated representative, the employer may require, as a condition of access, that the employee or designated representative agree in writing not to use the trade secret information for the purpose of commercial gain and not to permit misuse of the trade secret information by a competitor

or potential competitor of the employer.

F. Employee information.

1. Upon an employee's first entering into employment, and at least annually thereafter, each employer shall inform employees exposed to toxic substances or harmful physical agents of the following;

a. The existence, location, and availability of any records covered by this rule;

b. The person responsible for maintaining and providing access to records; and

c. Each employee's right of access to these records.

2. Each employer shall make readily available to employees a copy of this rule and its appendices, and shall distribute to employees any informational materials concerning this rule which are made available to the employer by the Administrator.

G. Transfer of Records

1. Whenever an employer is ceasing to do business, the employer shall transfer all records subject to this Rule to the successor employer. The successor employer shall receive and maintain these records.

2. Whenever an employer is ceasing to do business and there is no successor employer to receive and maintain the records subject to this standard, the employer shall notify affected employees of their rights of access to records at least three (3) months prior to the cessation of the employer's business.

3. Whenever an employer either is ceasing to do business and there is no successor employer to receive and maintain the records, or intends to dispose of any records required to be preserved for at least thirty (30) years, the employer shall:

a. Transfer the records to the Director of the National Institute for Occupational Safety and Health (NIOSH) if so required by a specific occupational safety and health standard; or

b. Notify the Director of NIOSH in writing of the impending disposal of records at least three (3) months prior to the disposal of the records.

4. Where an employer regularly disposes of records required to be preserved for at least thirty (30) years, the employer may, with at least (3) months notice, notify the Director of NIOSH on an annual basis of the records intended to be disposed of in the coming year.

a. Appendices. The information contained in the appendices to this rule is not intended, by itself, to create any additional obligations not otherwise imposed by this rule nor detract from any existing obligation.

H. Effective date. This rule shall become effective on December 5, 1980. All obligations of this rule commence on the effective date except that the employer shall provide the information required under R614-1-12.F.1. to all current employees within sixty (60) days after the effective date.

R614-1-12A. Appendix A to R614-1-12 SAMPLE.

Authorization letter for the Release of Employee Medical Record Information to Designated Representative.

I, (full name of worker/patient), hereby authorize (individual or organization holding the medical records), to release to (individual or organization authorized to receive the medical information), the following medical information from my personal medical records: (Describe generally the information desired to be released).

I give my permission for this medical information to be used for the following purpose: ....., but I do not give permission for any other use or re-disclosure of this information.

(Note---Several extra lines are provided below so that you can place additional restrictions on this authorization letter if you want to. You may, however, leave these lines blank. On the other hand, you may want to (1) specify a particular expiration date for this letter (if less than one year): (2) describe medical information to be created in the future that you intend to be covered by this authorization letter, or (3) describe portions of the medical information in you records which you do not intend to be released as a result of this letter.)

Full name of Employee or Legal Representative

Signature of Employee or Legal Representative

Date of Signature

R614-1-12B. Appendix B to R614-1-12 Availability of NIOSH Registry of Toxic Effects of Chemical Substances (RTECS).

R614-1-12 applies to all employee exposure and medical records, and analysis thereof, of employees exposed to toxic substances or harmful physical agents (see R614-1-12.B.2.). The term "toxic substance" or "harmful physical agent" is defined by paragraph R614-1-3.FF. to encompass chemical substances, biological agents, and physical stresses for which there is evidence of harmful health effects. The standard uses the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) as one of the chief sources of information as to whether evidence of harmful health effects exists. If a substance is listed in the latest printed RTECS, the standard applies to exposure and medical records (and analysis of these records) relevant to employees exposed to the substances.

It is appropriate to note that the final standard does not require that employers purchase a copy of RTECS and many employers need not consult RTECS to ascertain whether their employee exposure or medical records are subject to the standard. Employers who do not currently have the latest printed edition of the NIOSH RTECS, however, may desire to obtain a copy. The RTECS is issued in an annual printed edition as mandated by Rule 20(a)(6) of the Occupational Safety and Health Act (29 U.S.C. 669 (a)(6)). The 1978 edition is the most recent printed edition as of May 1, 1980. Its Forward and Introduction describes the RTECS as follows:

"The annual publication of a list of known toxic substances is a NIOSH mandate under the Occupational Safety and Health Act of 1970. It is intended to provide basic information on the known toxic and biological effects of chemical substances for the use of employers, employees, physicians, industrial hygienists, toxicologists, researchers, and, in general, anyone concerned with the proper and safe handling of chemicals. In turn, this information may contribute to a better understanding of potential occupational hazards by everyone involved and ultimately may help to bring about a more healthful workplace environment.

"This registry contains 142,247 listings of chemical substances: 33,929 are names of different chemicals with their associated toxicity data and 90,318 are synonyms. This edition includes approximately 7,500 new chemical compounds that did not appear in the 1977 Registry.

"The Registry's purposes are many, and it serves a variety of users. It is a single source document for basic toxicity information and for other data, such as chemical identifiers and information necessary for the preparation of safety directives and hazard evaluations for chemical substances. The various types of toxic effects linked to literature citations provide researchers and occupational health scientists with an introduction to the toxicological literature, making their own review of the toxic hazards of a given substance easier. By presenting data on the lowest reported doses that produce effects by several routes of entry in various species, the Registry furnishes valuable information to those responsible for preparing safety data sheets for chemical substances in the workplace. Chemical and production engineers can use the Registry to identify the hazards which may be associated with chemical intermediates in the development of final products, and thus can more readily select substitutes or alternate processes which may be less hazardous.

"In this edition of the Registry, the editors intend to identify "all known toxic substances" which may exist in the environment and to provide pertinent data on the toxic effects from known does entering an organism by any route described. Data may be used for the evaluation of chemical hazards in the environment, whether they be in the workplace, recreation area, or living quarters.

"It must be reemphasized that the entry of a substance in the Registry does not automatically mean that it must be avoided. A listing does mean, however, that the substance has the documented potential of being harmful if misused, and care must be exercised to prevent tragic consequences."

The RTECS 1978 printed edition may be purchased for $13.00 from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, D.C. 20402 (202-783-3238) (GPO Stock No. 017-033-00346-7). The 1979 printed edition is anticipated to be issued in the summer of 1980. Some employers may also desire to subscribe to the quarterly update to the RTECS which is published in a microfiche edition. An annual subscription to the quarterly microfiche may be purchase from the GPO for $14.00 (Order the "Microfiche Edition. Registry of Toxic Effects of Chemical Substances"). Both the printed edition and the microfiche edition of RTECS are available for review at many university and public libraries throughout the country. The latest RTECS editions may also be examined at OSHA Technical Data Center, Room N2439-Rear, United States Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 (202-523-9700), or any OSHA Regional or Area Office (See major city telephone directories under United States Government-Labor Department).

KEY: safety

R634. Natural Resources, Administration.
R634-1. Americans With Disabilities Complaint Procedure.
R634-1-1. Authority and Purpose.

(1) This rule is promulgated pursuant to Section 63-46a-3(2) of the state Administrative Rulemaking Act. The department, pursuant to 28 CFR 35.107, 1997 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.

(2) The provision of 28 CFR 35, 1997 ed., implements the provisions of Title II of the Americans With Disabilities Act, 42 USC 12201, which provides that no qualified individual with a disability, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by this or any such entity.

R634-1-2. Definitions.

(1) "Department" means the state Department of Natural Resources.

(2) "The ADA Coordinator" means the Department of Natural Resources' Coordinator or designee who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities.

(3) "The Department of Natural Resources ADA Coordinating Committee" means that committee composed of:

(a) the two assistant directors;

(b) the Human Resource director; and

(c) the administrative assistant to the executive director.

(4) "The ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies:

(a) Office of Planning and Budget;

(b) Department of Human Resource Management;

(c) Division of Risk Management;

(d) Division of Facilities Construction and Management; and

(e) Office of the Attorney General.

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

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

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

R634-1-3. Filing of Complaints.

(1) A 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 November 16, 1997, and the effective date of this rule may be filed within 180 days of the effective date of this rule.

(2) The complaint shall be filed with the department's ADA Coordinator, preferably in writing or in another suitable format.

(3) Each complaint should:

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

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

(c) describe the alleged discriminatory action in sufficient detail to inform the department of the nature and date of the alleged violation;

(d) describe the action and accommodation desired; and

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

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

R634-1-4. Investigation of Complaint.

(1) The ADA Coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in Section R634-1-3(c) if it is not made available by the individual.

(2) When conducting the investigation, the ADA Coordinator will consult with the Department of Natural Resources' ADA Coordinating Committee. The ADA Coordinator may also seek assistance from the department's legal staff and the director of the division against which the complaint was filed, in determining what action, if any, shall be taken on the complaint. The ADA Coordinator shall consult with the ADA State Coordinating Committee before making any decision that would involve:

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

(b) facility modifications which are not absorbable within the department's budget and would require appropriation authority; or

(c) a situation which would involve an individual's employment status.

R634-1-5. Issuance of Decision.

A written determination, or in another suitable format, as to the validity of a complaint, along with a description of the resolution, if any, will be issued by the ADA Coordinator, and a copy shall be forwarded to the complainant no later than 10 working days after the complaint has been filed. If more time is needed in the investigation, the ADA Coordinator shall communicate the reason and time frames to the complainant.

R634-1-6. Appeals.

(1) The individual may appeal the decision of the ADA Coordinator by filing an appeal within 10 working days from

the receipt of the decision.

(2) The appeal shall be filed, preferably in writing or in another suitable format, with the department's executive director or designee.

(3) 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.

(4) 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.

(5) The executive director or designee shall review the factual findings of the investigation and the individual's statement regarding 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. The executive director or designee shall also consult with the ADA State Coordinating Committee before making any decision that would involve:

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

(b) facility modifications which are not absorbable within the department's budget and would require appropriation authority; or

(c) a situation that would involve an individual's employment status.

(6) A written determination, or in another suitable format, as to the validity of a complaint, along with a description of the resolution, if any, will be issued by the executive director or designee, and a copy shall be forwarded to the complainant no later than 10 working days after the appeal has been filed. If more time is needed in the investigation, the executive director or designee shall communicate the reason and time frames to the complainant.

R634-1-7. Classification of Records.

(1) The record of each complaint and appeal, and all written records produced or received as part of such actions, shall be classified as protected as defined under Section 63-2-304 until the 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 63-2-302 or controlled as defined in Section 63-2-303.

(2)(a) All other information gathered as part of the complaint record shall be classified as private information.

(b) Only the written decision of the ADA Coordinator, executive director or designees shall be classified as public information.

R634-1-8. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under:

(a) the state Anti-Discrimination Complaint Procedures, Section 67-19-32;

(b) the Federal ADA Complaint Procedures, 28 CFR Subpart F, beginning with Part 35.170, 1997 ed.; or

(c) any other Utah state or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: civil rights, liberties
January 15, 1998 63-46a-3(2)

R657. Natural Resources, Wildlife Resources.
R657-5. Taking Big Game.
R657-5-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking deer, elk, pronghorn, moose, bison, bighorn sheep, and Rocky Mountain goat.

(2) Specific dates, areas, methods of take, requirements, and other administrative details which may change annually are published in the proclamation of the Wildlife Board for taking big game.

R657-5-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Antlerless deer" means a deer without antlers or with antlers five inches or shorter.

(b) "Antlerless elk" means an elk without antlers or with antlers five inches or shorter.

(c) "Antlerless moose" means a moose with antlers shorter than its ears.

(d) "Arrow quiver" means a portable arrow case that completely encases all edges of the broadheads.

(e) "Buck deer" means a deer with antlers longer than five inches.

(f) "Buck pronghorn" means a pronghorn with horns longer than five inches.

(g) "Bull elk" means an elk with antlers longer than five inches.

(h) "Bull moose" means a moose with antlers longer than its ears.

(i) "Doe pronghorn" means a pronghorn without horns or with horns five inches or shorter.

(j) "Highway" means the entire width between property lines of every way or place of any nature when any part of it is open to the use of the public as a matter of right for vehicular travel.

(k) "Hunter's choice" means either sex may be taken.

(l) "Permit" for purposes of this rule means a secondary document which:

(i) requires a wildlife habitat authorization as a prerequisite to its issuance; and

(ii) grants authority to engage in specific activities under the Wildlife Resources Code or a rule or proclamation of the Wildlife Board.

(m)(i) "Resident" for purposes of this rule means a person who:

(A) has been domiciled in the state of Utah for six consecutive months immediately preceding the purchase of a license or permit; and

(B) does not claim residency for hunting, fishing, or trapping in any other state or country.

(ii) A Utah resident retains Utah residency if that person leaves this state:

(A) to serve in the armed forces of the United States or for religious or educational purposes; and

(B) complies with Subsection (m)(i)(B).

(iii)(A) A member of the armed forces of the United States and dependents are residents for the purposes of this chapter as of the date the member reports for duty under assigned orders in the state if the member:

(I) is not on temporary duty in this state; and

(II) complies with Subsection (m)(i)(B).

(iv) A copy of the assignment orders must be presented to a wildlife division office to verify the member's qualification as a resident.

(v) A nonresident attending an institution of higher learning in this state as a full-time student may qualify as a resident for purposes of this chapter if the student:

(A) has been present in this state for 60 consecutive days immediately preceding the purchase of the license or permit; and

(B) complies with Subsection (m)(i)(B).

(vi) A Utah resident license or permit is invalid if a resident license for hunting, fishing, or trapping is purchased in any other state or country.

(vii) An absentee landowner paying property tax on land in Utah does not qualify as a resident.

(n) "Spike bull" means a bull elk which has at least one antler having no branching above the ears. Branched means a projection on an antler longer than one inch, measured from its base to its tip.

(o) "Wildlife Habitat Authorization" for purposes of this rule means the primary document granting authority to engage in activities under:

(a) the Wildlife Resources Code; or

(b) a rule or proclamation of the Wildlife Board.

R657-5-3. Wildlife Habitat Authorization, License, Permit, and Tag Requirements.

(1) A person may engage in hunting protected wildlife or in the sale, trade, or barter of protected wildlife or their parts in accordance with Section 23-19-1 and the rules or proclamations of the Wildlife Board.

(2) Any license, permit, or tag that is mutilated or otherwise made illegible is invalid and may not be used for taking or pursuing big game.

R657-5-4. Age Requirements and Restrictions.

(1)(a) Any resident or nonresident 14 years of age or older may purchase a wildlife habitat authorization, and permit and tag to hunt big game. A person 13 years of age may purchase a wildlife habitat authorization, and permit and tag to hunt big game if that person's 14th birthday falls within the calendar year for which the wildlife habitat authorization, permit and tag are issued.

(b) A person must purchase a wildlife habitat authorization prior to obtaining a permit and tag to hunt big game.

(2)(a) A person 15 years of age or younger must be accompanied by his parent or legal guardian, or other responsible person 21 years of age or older and approved by his parent or guardian, while hunting big game with any weapon.

(b) As used in this section, "accompanied" means at a distance within which visual and verbal communication are maintained for the purposes of advising and assisting.

R657-5-5. Duplicate License, Wildlife Habitat Authorization and Permit.

Whenever any unexpired license, wildlife habitat authorization, permit, tag or certificate of registration is destroyed, lost or stolen, a person may obtain a duplicate from a division office, for five dollars or half of the price of the original license, wildlife habitat authorization or permit, whichever is less.

R657-5-6. Companion Hunting.

(1) A person may take a deer for a person who is legally blind or quadriplegic provided the blind or quadriplegic person:

(a) meets hunter education requirements as provided in Section 23-19-11;

(b) purchases a wildlife habitat authorization and the appropriate permit and tag;

(c) obtains a certificate of registration from the division; and

(d) is accompanied by a companion hunter who has obtained a wildlife habitat authorization and has completed a division approved hunter education course as provided in Section 23-19-11.

(2) A person who is legally blind may obtain a certificate of registration from the division by submitting a signed statement by a licensed ophthalmologist, optometrist, or physician verifying that the applicant:

(a) has no more than 20/200 visual acuity in the better eye when corrected; or

(b) has, in the case of better than 20/200 central vision, a restriction of the field of vision in the better eye which subtends an angle of vision 20 degrees or less.

(3) A person who is quadriplegic may obtain a certificate of registration from the division by submitting a signed statement by a licensed physician verifying that the applicant is quadriplegic.

(4) The blind or quadriplegic person must be accompanied by the companion hunter at the time of kill and while transporting the deer.

R657-5-7. Special Season Extension for Disabled Persons.

(1) A certificate of registration may be obtained from a division office requesting an extension of 30 days for any limited entry hunt, provided the person requesting the extension:

(a) is quadriplegic;

(b) meets hunter education requirements as provided in Section 23-19-11; and

(c) obtains a wildlife habitat authorization and the appropriate permit and tag.

R657-5-8. Hunting Hours.

Big game may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

R657-5-9. Temporary Game Preserves.

(1)(a) A person who does not have a valid permit to hunt on a temporary game preserve may not carry a firearm or archery equipment on any temporary game preserve while the respective hunts are in progress.

(b) "Carry" means having a firearm on your person while hunting in the field.

(2) As used in this section, "temporary game preserve" means all bull elk, buck pronghorn, moose, bison, bighorn sheep, Rocky Mountain goat, limited entry buck deer areas and cooperative wildlife management units, excluding incorporated areas, cities, towns and municipalities.

(3) Weapon restrictions on temporary game preserves do not apply to:

(a) a person licensed to hunt upland game using a shotgun with no larger than number four shot during the upland game season;

(b) livestock owners protecting their livestock; or

(c) peace officers in the performance of their duties.

R657-5-10. Prohibited Weapons.

(1) A person may not use any weapon or device to take big game other than those expressly permitted in this rule.

(2) A person may not use:

(a) a firearm capable of being fired fully automatic; or

(b) any light enhancement device or aiming device that casts a beam of light.

R657-5-11. Rifles and Shotguns.

(1) The following rifles and shotguns may be used to take big game:

(a) any rifle firing centerfire cartridges and expanding bullets; and

(b) a shotgun, 20 gauge or larger, firing only number 4 buckshot or slug ammunition.

R657-5-12. Handguns.

(1) A handgun may be used to take deer and pronghorn, provided the handgun is a minimum of .24 caliber, fires a centerfire cartridge with an expanding bullet, has a barrel length of 6 inches or longer, and develops 500 foot-pounds of energy at the muzzle.

(2) A handgun may be used to take elk, moose, bison, bighorn sheep, and Rocky Mountain goat provided the handgun is a minimum of .24 caliber, fires a centerfire cartridge with an expanding bullet, has a barrel length of 6 inches or longer, and develops 500 foot-pounds of energy at 100 yards.

R657-5-13. Muzzleloaders.

(1) A muzzleloader may be used during any big game hunt, except an archery hunt, provided the muzzleloader:

(a) can be loaded only from the muzzle;

(b) has iron sights or a fixed, 1x scope;

(c) has a single barrel;

(d) has a minimum barrel length of 21 inches; and

(e) is capable of being fired only once without reloading.

(2)(a) A 170 grain or larger bullet, including sabots must be used for taking deer and pronghorn.

(b) A 210 grain or larger bullet must be used for taking elk, moose, bison, bighorn sheep, and Rocky Mountain goat, except sabot bullets used for taking these species must be a minimum of 240 grains.

(3)(a) A person who has obtained a muzzleloader permit may not possess or be in control of any firearm other than a muzzleloading rifle or have a firearm other than a muzzleloading rifle in his camp or motor vehicle during a muzzleloader hunt.

(b) The provisions of Subsection (a) do not apply to:

(i) a person licensed to hunt upland game using a shotgun with shot no larger than 4 during the upland game season;

(ii) a person licensed to hunt big game species during hunts that coincide with the muzzleloader hunt; or

(iii) livestock owners protecting their livestock.

R657-5-14. Archery Equipment.

(1) Archery equipment may be used during any big game hunt, except a muzzleloader hunt, provided:

(a) the minimum bow pull is 40 pounds at the draw or the peak, whichever comes first; and

(b) arrowheads used have two or more sharp cutting edges that cannot pass through a 7/8 inch ring.

(2) The following equipment or devices may not be used to take big game:

(a) a crossbow; except as provided in Section R657-5-13.

(b) arrows with chemically treated or explosive arrowheads;

(c) a mechanical device for holding the bow at any increment of draw; or

(d) a release aid that is not hand held or that supports the draw weight of the bow.

(3) Arrows carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.

(4)(a) A person who has obtained an archery permit may not possess or be in control of a firearm or have a firearm in his camp or motor vehicle during an archery hunt.

(b) The provisions of Subsection (a) do not apply to:

(i) a person licensed to hunt upland game using a shotgun with shot no larger than 4 during the upland game season;

(ii) a person licensed to hunt big game species during hunts that coincide with the archery hunt; or

(iii) livestock owners protecting their livestock.

R657-5-15. Crossbows.

(1)(a) A disabled person who has a permanent, physical disability may use a crossbow to hunt deer during the archery hunt dates provided in the proclamation of the Wildlife Board for taking big game, provided that person:

(i) applies for and obtains a certificate of registration authorizing the use of a crossbow; and

(ii) provides a physician's statement confirming the disability as defined in Subsection (b).

(b) "Disabled person" means a person who has a permanent physical impairment due to injury or disease, congenital or acquired, which renders the person so severely disabled as to be unable to use conventional archery equipment.

(2)(a) Any crossbow used to hunt deer must have:

(i) a stock that is at least 18 inches long;

(ii) a minimum draw weight of 125 pounds;

(iii) a draw length that is at least 18 inches from the front of the crossbow to the back of the string in a cocked position; and

(iv) a positive safety mechanism.

(b) Arrows or bolts used must be at least 18 inches long and must have a broadhead with two or more sharp cutting edges that cannot pass through a 7/8 inch ring.

(3) Arrows or bolts carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.

(4) A cocked crossbow may not be carried in or on a vehicle.

R657-5-16. Areas With Special Restrictions.

(1)(a) Hunting of any wildlife is prohibited within the boundaries of all park areas, except those designated by the Division of Parks and Recreation in Rule R651-603-5.

(b) Hunting with rifles and handguns in park areas designated open is prohibited within one mile of all park area facilities, including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(c) Hunting with shotguns or archery equipment is prohibited within one-quarter mile of the areas provided in Subsection (b).

(2) Hunting is closed within the boundaries of all national parks and monuments unless otherwise provided by the governing agency.

(3) Hunters must observe tribal regulations concerning wildlife while hunting on Indian reservation and trust lands.

(4) Military installations, including Camp Williams, are closed to hunting and trespassing unless otherwise authorized.

(5) In Salt Lake County, a person may not:

(a) hunt big game or discharge a shotgun or archery equipment within 600 feet of a road, house, or any other building; or

(b) discharge a rifle, handgun, shotgun firing slug ammunition, or muzzleloader within one mile of a cabin, house, or other building regularly occupied by people, except west of I-15 a muzzleloader may not be discharged within one-half mile of a cabin, house, or other building regularly occupied by people.

(6) Hunting is closed within a designated portion of the town of Alta. Hunters may refer to the town of Alta for boundaries and other information.

R657-5-17. Spotlighting.

(1)(a) Except as provided in Section 23-13-17, a person may not use or cast the rays of any spotlight, headlight, or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife.

(b) The use of a spotlight or other artificial light in a field, woodland, or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to the use of headlights or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife.

R657-5-18. Use of Vehicle or Aircraft.

(1)(a) A person may not use an airplane or any other airborne vehicle or device, or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles, except a vessel, to take protected wildlife.

(b) A person may not take protected wildlife being chased, harmed, harassed, rallied, herded, flushed, pursued or moved by an aircraft or any other vehicle or conveyance listed in Subsection (a).

(c) Big game may be taken from a vessel provided:

(i) the motor of a motorboat has been completely shut off;

(ii) the sails of a sailboat have been furled; and

(iii) the vessel's progress caused by the motor or sail has ceased.

(2)(a) A person may not use any type of aircraft from 48 hours before a hunt begins through 48 hours after the hunting season ends to:

(i) transport a hunter or hunting equipment into a hunting area;

(ii) transport a big game carcass; or

(iii) locate, or attempt to observe or locate any protected wildlife.

(b) Flying slowly at low altitudes, hovering, circling or repeatedly flying over a forest, marsh, field, woodland or rangeland where protected wildlife is likely to be found may be used as evidence of violations of Subsections (1) and (2).

(3) The provisions of this section do not apply to the operation of an aircraft in a usual manner, or landings and departures from improved airstrips, where there is no attempt or intent to locate protected wildlife.

R657-5-19. Party Hunting.

A person may not take big game for another person, except as provided in Section R657-5-5.

R657-5-20. Big Game Contests.

A person may not enter or hold a big game contest that:

(1) is based on big game or their parts; and

(2) offers cash or prizes worth more than $500.

R657-5-21. Tagging.

(1) The carcass of any species of big game must be tagged in accordance with Section 23-20-30.

(2) A person may not hunt or pursue big game after any of the notches have been removed from the tag or the tag has been detached from the permit.

(3) The tag must remain with the largest portion of the meat until the animal is entirely consumed.

R657-5-22. Transporting Big Game Within Utah.

(1) A person may transport big game within Utah only as follows:

(a) the head or sex organs must remain attached to the largest portion of the carcass;

(b) the antlers attached to the skull plate must be transported with the carcass of an elk taken in a spike bull unit; and

(c) the person who harvested the big game animal must accompany the carcass and must possess a valid permit corresponding to the tag attached to the carcass, except as provided in Subsection (2).

(2) A person who did not take the big game animal may transport it only after obtaining a shipping permit or disposal receipt from the division or a donation slip as provided in Section 23-20-9.

R657-5-23. Exporting Big Game From Utah.

(1) A person may export big game or their parts from Utah only if:

(a) the person who harvested the big game animal accompanies it and possesses a valid permit corresponding to the tag which must be attached to the largest portion of the carcass; or

(b) the person exporting the big game animal or its parts, if it is not the person who harvested the animal, has obtained a shipping permit from the division.

R657-5-24. Purchasing or Selling Big Game or Their Parts.

(1) A person may only purchase, sell, offer or possess for sale, barter, exchange or trade any big game or their parts as follows:

(a) Antlers, heads and horns of legally taken big game may be purchased or sold only between February 15 through August 9;

(b) Untanned hides of legally taken big game may be purchased or sold only between August 20 through February 15;

(c) tanned hides of legally taken big game may be purchased or sold at any time; and

(d) shed antlers and horns may be purchased at any time.

(2) A person selling or purchasing antlers, heads, horns or untanned hides shall keep transaction records stating:

(a) the name and address of the person who harvested the animal;

(b) the transaction date; and

(c) the permit number of the person who harvested the animal.

(3) Subsection (2) does not apply to scouting programs or other charitable organizations using untanned hides.

R657-5-25. Possession of Antlers and Horns.

(1) A person may possess antlers or horns or parts of antlers or horns only from:

(a) lawfully harvested big game;

(b) antlers or horns lawfully purchased as provided in Section R657-5-24; or

(c) shed antlers or horns.

(2) "Shed antler" means an antler which:

(a) has been dropped naturally from a big game animal as part of its annual life cycle; and

(b) has a rounded base commonly known as the antler button or burr attached which signifies a natural life cycle process.

(3) "Shed horn" means the sheath from the horn of a pronghorn that has been dropped naturally as part of its annual life cycle. No other big game species shed their horns naturally.

R657-5-26. Poaching-Reported Reward Permits.

(1) Any person who provides information leading to another person's arrest and successful prosecution for wanton destruction of a bull moose, desert bighorn ram, rocky mountain bighorn ram, rocky mountain goat, bison, bull elk, buck deer or buck pronghorn under Section 23-20-4 for any once-in-a-lifetime species or within any limited entry area may receive a permit from the division to hunt in the following year for the same species and on the same once-in-a-lifetime or limited entry area where the violation occurred, except as provided in Subsection (2).

(2)(a) In the event that issuance of a poaching-reported reward permit would exceed 5% of the total number of limited entry or once-in-a-lifetime permits issued in the following year for the respective area, a permit shall not be issued for that respective area. As an alternative, the division may issue a permit as outlined in Subsections (b) or (c).

(b) If the illegally taken animal is a bull moose, desert bighorn ram, rocky mountain bighorn ram, rocky mountain goat or bison, a permit for an alternative species and an alternative once-in-a-lifetime or limited entry area that has been allocated more than 20 permits may be issued.

(c) If the illegally taken animal is a bull elk, buck deer or buck pronghorn, a permit for the same species on an alternative limited entry area that has been allocated more than 20 permits may be issued.

(3)(a) The division may issue only one poaching-reported reward permit for any one animal illegally taken.

(b) No more than one poaching-reported reward permit shall be issued to any one person per successful prosecution.

(c) No more than one poaching-reported reward permit per species shall be issued to any one person in any one calendar year.

(4)(a) Poaching-reported reward permits may only be issued to the person who provides the most pertinent information leading to a successful prosecution. Permits are not transferrable.

(b) If information is received from more than one person, the director of the Division shall make a determination based on the facts of the case, as to which person provided the most pertinent information leading to the successful prosecution in the case.

(c) The person providing the most pertinent information shall qualify for the poaching-reported reward permit.

(5) Any person who receives a poaching-reported reward permit must be eligible to hunt and obtain big game permits as provided in all rules and regulations of the Wildlife Board and the Wildlife Resources Code.

(6) For purposes of this section, "successful prosecution" means the screening, filing of charges and subsequent adjudication for the poaching incident.

R657-5-27. Bucks, Bulls, and Once-In-A-Lifetime Application -Deadlines.

(1) A person may obtain only one permit per species of big game, except antlerless permits.

(2) Applications are available from license agents and division offices.

(3) A resident may apply in the bucks, bulls and once-in-a-lifetime drawing for the following permits:

(a) only one of the following species:

(i) buck deer - premium limited entry, limited entry and cooperative wildlife management unit;

(ii) bull elk - limited entry, cooperative wildlife management unit and muzzleloader; or

(iii) buck pronghorn - limited entry and cooperative wildlife management unit; and

(b) only one once-in-a-lifetime permit, including once-in-a-lifetime cooperative wildlife management unit permits.

(4) A nonresident may apply in the bucks, bulls and once-in-a-lifetime drawing for the following permits:

(a) only one of the following species:

(i) buck deer - premium limited entry and limited entry;

(ii) bull elk - limited entry and muzzleloader; or

(iii) buck pronghorn - limited entry; and

(b) only one once-in-a-lifetime permit; and

(c) general archery, general season or general muzzleloader buck deer.

(5) A wildlife habitat authorization may be purchased before applying, or the wildlife habitat authorization will be issued to the applicant upon successfully drawing a permit.

(6)(a) Applications must be mailed by the date prescribed in the proclamation of the Wildlife Board for taking big game. Applications filled out incorrectly or received later than the date prescribed in the big game proclamation may be rejected. Late applications will be returned unopened.

(b) If an error is found on an application, the applicant may be contacted for correction.

(7) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. To avoid disappointment and wasting the permit and fee if access is not obtained, hunters should get permission before applying. The division does not guarantee access and does not have the names of landowners where hunts occur.

(8) Only a resident may apply for or obtain a resident permit and only a nonresident may apply for or obtain a nonresident permit, except as provided in Subsections R657-5-30(4) and R657-5-32(1).

R657-5-28. Fees for Bucks, Bulls and Once-In-A-Lifetime Applications.

(1) Each application must include:

(a) the permit fee for any nonresident general permit applied for;

(b) the highest permit fee of any other permits applied for;

(c) a $5 nonrefundable handling fee for one of the following permits:

(i) buck deer;

(ii) bull elk; or

(iii) buck pronghorn; and

(d) a $5 nonrefundable handling fee for a once-in-a-lifetime permit; and

(e) a $5 nonrefundable handling fee for any nonresident general permit applied for; and

(f) the wildlife habitat authorization fee, if it has not yet been purchased.

(2)(a) Personal checks, money orders, cashier's checks and credit cards are accepted from residents.

(b) Money orders, cashier's checks and credit cards are accepted from nonresidents. Personal checks are not accepted from nonresidents.

(3)(a) Credit cards must be valid at least 30 days after the drawing results are posted.

(b) If applicants are applying as a group, all fees for all applicants in that group must be charged to one credit card.

(c) Handling fees are charged ot the credit card when the application is processed. Permit fees are charged after the drawing, if successful.

(4) An application is voidable if the check is returned unpaid from the bank or the credit card is invalid or refused.

R657-5-29. Applying as a Group.

(1)(a) Two people may apply together for elk or pronghorn permits.

(b) Up to four people may apply together for deer permits.

(2) Applicants must indicate the number of hunters in the group by filling in the appropriate box on each application form.

(3) Group applicants must submit their applications together in the same envelope.

(4) Residents and nonresidents may apply together.

(5) When applying as a group:

(a) if one applicant is successful in drawing a permit, then all applicants with valid applications in that group are successful;

(b) if the group is rejected due to an error in fees and only one species is applied for, then the entire group is rejected;

(c) if the group is rejected due to an error in fees and more than one species is applied for, the group will be kept in the drawing for any species with sufficient fees, using the draw order; or

(d) if one or more members of the group are rejected due to an error other than fees, the members with valid applications will be kept in the drawing, unless the group indicates on the application that all members are to be rejected.

R657-5-30. Bucks, Bulls and Once-In-A-Lifetime Drawing.

(1) Bucks, bulls, and once-in-a-lifetime drawing results are posted at the Lee Kay Center for Hunter Education, Cache Valley Hunter Education Center and division offices on the date published in the proclamation of the Wildlife Board for taking big game.

(2) Permits are drawn in the order listed in the proclamation of the Wildlife Board for taking big game.

(3) Any person who draws one of the following permits is not eligible to draw a once-in-a-lifetime permit:

(a) a premium limited entry, limited entry or cooperative wildlife management unit buck deer;

(b) a limited entry, cooperative wildlife management unit or muzzleloader bull elk; or

(c) a limited entry or cooperative wildlife management unit buck pronghorn.

(4) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

R657-5-31. Bucks, Bulls and Once-In-A-Lifetime Application Refunds.

(1) Unsuccessful applicants receive a refund in May.

(2) The handling fees are nonrefundable.

R657-5-32. Permits Remaining After the Bucks, Bulls and Once-In-A-Lifetime Drawing.

(1) Permits remaining after the bucks, bulls, and once-in-a-lifetime drawing are sold only by mail or on a first-come, first-served basis beginning and ending on the dates provided in the proclamation of the Wildlife Board for taking big game. These permits may be purchased by either residents or nonresidents.

(2) Applications are available from division offices and license agents.

(3) The same application form used for the bucks, bulls and once-in-a-lifetime big game drawing must be used when applying for remaining permits by mail.

R657-5-33. Waiting Periods for Deer.

(1) A person who obtained a premium limited entry buck, limited entry buck or cooperative wildlife management unit buck deer permit during the preceding two years may not apply for any of these permits during the current year.

(2) A person who obtains a premium limited entry buck, limited entry buck or cooperative wildlife management unit buck deer permit in the big game drawing, may not apply for any of these permits again for a period of two years.

(3) A waiting period does not apply to general archery, general season, general muzzleloader, antlerless deer, conservation, sportsman and poaching-reported reward deer permits.

R657-5-34. Waiting Periods for Elk.

(1) A person who obtained a limited entry or cooperative wildlife management unit bull elk permit during the preceding four years may not apply for either of these permits during the current year.

(2) A person who obtains a limited entry or cooperative wildlife management unit bull elk permit in the big game drawing, may not apply for either of these permits for a period of five years.

(3) A waiting period does not apply to general archery, general season muzzleloader, ML300, antlerless elk, conservation, sportsman and poaching-reported reward elk permits.

R657-5-35. Waiting Periods for Pronghorn.

(1) A person who obtained a buck pronghorn permit in the preceding four years, may not apply for a buck pronghorn permit during the current year.

(2) A person who obtains a buck pronghorn or cooperative wildlife management unit buck pronghorn permit in the big game drawing, may not apply for either of these permits for a period of five years.

(3) A waiting period does not apply to doe pronghorn, pronghorn conservation, sportsman and poaching-reported reward permits.

R657-5-36. Waiting Periods for Antlerless Moose.

(1) A person who obtained an antlerless moose permit or a cooperative wildlife management unit antlerless moose permit during the preceding four years, may not apply for an antlerless moose permit during the current year.

(2) A person who obtains an antlerless moose permit or a cooperative wildlife management unit antlerless moose permit in the big game drawing, may not apply for an antlerless moose permit for a period of five years.

R657-5-37. Waiting Periods for Once-in-a-Lifetime Species.

(1) Any person who has obtained a permit for a bull

moose, bison, Rocky Mountain bighorn sheep, desert bighorn sheep or Rocky Mountain goat through the big game drawing or from a private landowner may not apply for a once-in-a-lifetime permit for the same species in the big game drawing.

(2) A person who has been convicted of unlawfully taking a once-in-a-lifetime species may not apply for or obtain a permit for that species.

R657-5-38. Waiting Periods for Permits Obtained After the Drawing.

(1) Waiting periods provided in Sections R657-5-33 through R657-5-36 do not apply to the purchase of the permits sold over the counter.

(2) However, waiting periods are incurred as a result of purchasing permits after the drawing. Therefore, if a remaining permit is purchased in the current year, waiting periods will be in effect when applying in the drawing in following years.

R657-5-39. Cooperative Wildlife Management Unit Permits and Landowner Permits.

(1)(a) A waiting period and once-in-a-lifetime status apply to cooperative wildlife management unit permits obtained through the drawing.

(b) The number of years that applies is the same number of years provided in Sections R657-5-33 through R657-5-37.

(2) A waiting period or once-in-a-lifetime status does not apply to landowner or cooperative wildlife management unit permits obtained through a landowner, except as provided in Subsection R657-5-37(2).

R657-5-40. Bonus Point System.

(1) Bonus points are used to improve odds for drawing permits.

(2)(a) A bonus point is awarded for each valid unsuccessful application in the bucks, bulls and once-in-a-lifetime big game drawing.

(b) Bonus points are awarded by species.

(c) Bonus points are awarded for:

(i) premium limited entry, limited entry and cooperative wildlife management unit buck deer;

(ii) limited entry and cooperative wildlife management unit bull elk;

(iii) limited entry and cooperative wildlife management unit buck pronghorn; and

(iv) all once-in-a-lifetime species.

(3)(a) Fifty percent of the permits for each hunt unit and species will be reserved for applicants with bonus.

(b) Based on the applicant's first choice, the reserved permits will be designated by a random drawing number to eligible applicants with the greatest number of bonus points for each species.

(c) If reserved permits remain, the reserved permits will be designated by a random number to eligible applicants with the next greatest number of bonus points for each species.

(d) The procedure in Subsection (c) will continue until all reserved permits have been issued or no applications for that species remain.

(e) Any reserved permits remaining and any applicants who were not selected for reserved permits will be returned to the general drawing.

(4)(a) Each applicant receives a random drawing number for:

(i) each species applied for; and

(ii) each bonus point for that species.

(5) Bonus points are forfeited if a person obtains a permit through the drawing for that bonus point species, including any permit obtained after the drawing.

(6) Bonus points are not forfeited if:

(a) a person is successful in obtaining a conservation permit or sportsman permit;

(b) a person obtains a landowner or a cooperative wildlife management unit permit from a landowner; or

(c) a person obtains a poaching-reported reward permit.

(7) Bonus points are only awarded if a person is unsuccessful in obtaining a permit through the drawing.

(8) Bonus points are not transferable.

(9) Bonus points are averaged and rounded down when two or more people apply together on a group application.

(10) Bonus points are tracked using social security numbers or division issued hunter identification numbers. Applicants who do not include this number or include an incorrect number on the application will not collect a bonus point.

R657-5-41. General Archery Buck Deer Hunt.

(1) The dates of the general archery buck deer hunt are provided in the proclamation of the Wildlife Board for taking big game.

(2) A person who has obtained a general archery buck deer permit may use archery equipment to take:

(a) one buck deer within the general hunt area specified on the permit, except limited entry deer and cooperative wildlife management unit deer areas and specific hunt units published in the proclamation of the Wildlife Board for taking big game;

(b) a deer of hunter's choice within the Northern region general hunt area; or

(c) a deer of hunter's choice within the Wasatch Front or Uintah Basin extended archery areas.

(3) A person who obtains a general archery buck deer permit for any hunt area may hunt within the Wasatch Front and Uintah Basin extended archery areas.

(4) A person who has obtained a general archery deer permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer.

(5) Hunter orange fluorescent material must be worn if a centerfire rifle hunt is also in progress in the same area. Archers are cautioned to study rifle hunt tables and identify these areas described in the proclamation of the Wildlife Board for taking big game.

R657-5-42. General Season Buck Deer Hunt.

(1) The dates for the general season buck deer are provided in the proclamation of the Wildlife Board for taking big game.

(2) A person who has obtained a general season buck permit may use any legal weapon to take one buck deer within the hunt area specified on the permit, except limited entry deer and cooperative wildlife management unit deer areas and

specific hunt units published in the proclamation of the Wildlife Board for taking big game.

(3) A person who has obtained a general season buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer.

R657-5-43. General Muzzleloader Buck Deer Hunt.

(1) The dates for the general muzzleloader buck hunt are provided in the proclamation of the Wildlife Board for taking big game.

(2) A person who has obtained a general muzzleloader buck permit may use a muzzleloader to take one buck deer within the general hunt area specified on the permit, except limited entry deer and cooperative wildlife management unit deer areas and specific hunt units published in the proclamation of the Wildlife Board for taking big game.

(3) A person who has obtained a general muzzleloader deer permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer.

(4) Hunter orange fluorescent material must be worn if a centerfire rifle hunt is also in progress in the same area. Muzzleloader hunters are cautioned to study the rifle hunt tables to identify these areas described in the proclamation of the Wildlife Board for taking big game.

R657-5-44. Limited Entry Buck Deer Hunts.

(1) To hunt in a limited entry area, hunters must obtain a limited entry buck permit. Limited entry areas are not open to general archery buck, general season buck, or general muzzleloader buck hunting, except as specified in the proclamation of the Wildlife Board for taking big game.

(2) A limited entry buck deer permit allows a person using the prescribed legal weapon, to take one buck deer within the area and season specified on the permit, except deer cooperative wildlife management units located within the limited entry unit.

(3) A person who has obtained a limited entry buck permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer.

R657-5-45. Antlerless Deer Hunts.

(1) To hunt an antlerless deer, a hunter must obtain an antlerless deer permit.

(2) An antlerless deer permit allows a person to take one antlerless deer, per antlerless deer tag, using a legal weapon within the area and season as specified on the permit and in the antlerless addendum, except cooperative wildlife management units.

(3) A person who has obtained an antlerless deer permit may not hunt during any other antlerless deer hunt or obtain any other antlerless deer permit.

(4)(a) A person who has obtained a general archery deer permit and an antlerless deer permit may use the antlerless deer permit during the general archery deer season provided:

(i) the appropriate archery equipment is used;

(ii) the antlerless deer is taken in the area specified on the antlerless deer permit; and

(iii) if the antlerless hunt occurs within a limited entry hunting unit, only a hunter possessing a limited entry archery buck permit for the specific unit may exercise this option.

(b) A person who obtains a muzzleloader deer permit and an antlerless deer permit may use the antlerless deer permit during the muzzleloader deer season provided:

(i) the appropriate muzzleloader equipment is used;

(ii) the antlerless deer is taken in the area specified on the antlerless permit; and

(iii) if the antlerless hunt area occurs within a limited entry hunting unit, only a hunter possessing a limited entry muzzleloader buck permit for the specific unit may exercise this option.

R657-5-46. General Archery Elk Hunt.

(1)(a) The dates of the general archery elk hunt are provided in the proclamation of the Wildlife Board for taking big game.

(b) The San Juan unit east of U.S. 191 is closed to general archery and general season bull elk hunting.

(2)(a) A general archery elk permit allows a person using archery equipment to take one elk of hunter's choice in a general season elk unit, except on elk cooperative wildlife management units.

(b) On a spike bull elk unit, archers may take an antlerless elk or a spike bull elk.

(3) A person who has obtained an archery elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-50(4).

(4) Hunter orange fluorescent material must be worn if a rifle hunt is also in progress in the same area. Archers are cautioned to study the rifle hunt tables to identify these areas described in the proclamation of the Wildlife Board for taking big game.

R657-5-47. General Season Bull Elk Hunt.

(1) The dates for the general season bull elk hunt are provided in the proclamation of the Wildlife Board for taking big game within general season elk units, except in the following closed areas:

(a) elk cooperative wildlife management units;

(b) Salt Lake County south of I-80 and east of I-15; and

(c) the San Juan unit east of US-191.

(2)(a) General season elk hunters may purchase either a spike bull permit or an any bull permit.

(b) A person who has obtained a general season spike bull elk permit may take a spike bull elk on a general season spike bull elk unit. Any bull units are closed to spike bull permittees.

(c) A person who has obtained a general season any bull elk permit may take any bull elk, including a spike bull elk on a general season any bull elk unit. Spike bull units are closed to any bull permittees.

(3) A person who has obtained a general season bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-50(4).

R657-5-48. Muzzleloader Elk Hunt.

(1) To hunt during the muzzleloader elk hunt, a hunter must obtain a muzzleloader elk permit.

(2) The dates of the muzzleloader elk hunt are provided in the proclamation of the Wildlife Board for taking big game

within the general season elk units, except in the following closed areas:

(a) Salt Lake County south of I-80 and east of I-15;

(b) elk cooperative wildlife management units; and

(c) the San Juan unit east of US-191.

(3) A person who has obtained a muzzleloader elk permit may take one elk of hunter's choice, except a hunter may take only a spike bull or an antlerless elk in a spike bull unit.

(4) A person who has obtained a muzzleloader elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-50(4).

R657-5-49. Limited Entry Bull Elk Hunt.

(1) To hunt in a limited entry bull elk area, a hunter must obtain a limited entry elk permit.

(2) A person who has obtained a limited entry elk permit may use any legal weapon to take one bull elk within the hunt area and season specified on the permit, except cooperative wildlife management units located within a limited entry unit. Spike bull elk restrictions do not apply to limited entry elk permittees.

(3) A person who has obtained a limited entry bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-50(4).

(4)(a) A hunter who draws a limited entry bull elk permit may also purchase a permit to hunt using archery equipment beginning 15 days prior to the date specified on the limited entry elk permit, except in the Panguitch Lake, Mt. Dutton, Pahvant, Fishlake, Monroe, Indian Peaks, Pilot Mountain and muzzleloader elk permit ML300 elk units.

(b) If an elk is not taken during this 15 day period, any legal weapon may be used during the dates specified on the limited entry bull elk permit.

R657-5-50. Antlerless Elk Hunts.

(1) To hunt an antlerless elk, a hunter must obtain an antlerless elk permit.

(2) An antlerless elk permit allows a person to take one antlerless elk using a legal weapon within the area and season as specified on the permit and in the antlerless addendum to the proclamation of the Wildlife Board for taking big game, except elk cooperative wildlife management units.

(3) A person who has obtained an antlerless elk permit may not hunt during any other antlerless elk hunt or obtain any other antlerless elk permit, except as provided in Subsection (4).

(4)(a) A person who has obtained an antlerless elk permit may purchase an additional antlerless elk permit beginning on the date published in the antlerless addendum to the proclamation of the Wildlife Board for taking big game, if any of these permits are available.

(b) A person who has obtained an antlerless elk permit may purchase an any bull, spike bull or hunter's choice elk permit beginning on the date published in the antlerless addendum to the proclamation of the Wildlife Board for taking big game, if any of these permits are available.

(c) A person who has obtained a bull elk or hunter's choice elk permit may purchase an antlerless elk permit beginning on the date published in the antlerless addendum to the proclamation of the Wildlife Board for taking big game, if any of these permits are available.

(5) A person who has obtained an antlerless elk permit for a season that extends beyond December 31 of the current year, must obtain a wildlife habitat authorization to hunt after December 31.

R657-5-51. Buck Pronghorn Hunts.

(1) To hunt buck pronghorn, a hunter must obtain a buck pronghorn permit.

(2) A person who has obtained a buck pronghorn permit may not obtain any other pronghorn permit or hunt during any other pronghorn hunt.

(3) A buck pronghorn permit allows a person using any legal weapon to take one buck pronghorn within the area and season specified on the permit, except during the buck pronghorn archery hunt, only archery equipment may be used.

R657-5-52. Doe Pronghorn Hunts.

(1) To hunt a doe pronghorn, a hunter must obtain a doe pronghorn permit.

(2) A doe pronghorn permit allows a person to take one doe pronghorn using a legal weapon within the area and season as specified on the permit and in the antlerless addendum to the proclamation of the Wildlife Board for taking big game, except pronghorn cooperative wildlife management Units.

(3) A person who has obtained a doe pronghorn permit may not hunt during any other pronghorn hunt or obtain any other pronghorn permit.

R657-5-53. Antlerless Moose Hunts.

(1) To hunt an antlerless moose, a hunter must obtain an antlerless moose permit.

(2) An antlerless moose permit allows a person to take one antlerless moose using a legal weapon within the area and season as specified on the permit and in the antlerless addendum to the proclamation of the Wildlife Board for taking big game, except in moose cooperative wildlife management units.

(3) A person who has obtained an antlerless moose permit may not hunt during any other moose hunt or obtain any other moose permit.

R657-5-54. Bull Moose Hunts.

(1) To hunt bull moose, a hunter must obtain a bull moose permit.

(2) A person who has obtained a bull moose permit may not obtain any other moose permit or hunt during any other moose hunt.

(3) A bull moose permit allows a person using any legal weapon to take one bull moose within the area and season specified on the permit, except in bull moose cooperative wildlife management units located within a limited entry unit.

R657-5-55. Bison Hunts.

(1) To hunt bison, a hunter must obtain a bison permit.

(2) A person who has obtained a bison permit may not obtain any other bison permit or hunt during any other bison hunt.

(3) The bison permit allows a person using any legal

weapon to take a bison within the area and season as specified on the permit.

(4)(a) A mandatory wildlife orientation course for the Antelope Island Hunt, is held on Antelope Island Park Headquarters.

(b) The Antelope Island hunt is administered by the Division of Parks and Recreation. Hunt fees include the handling fee, permit, and transportation on the island. Permittees are required to use these contract services. Permittees are required to furnish their own living quarters and food during their stay.

(c) Individuals accompanying the permittee must pay an additional fee and provide their own reliable four-wheel drive vehicle. Prior arrangements need to be made through the Division of Parks and Recreation.

(5) An orientation course is available for bison hunters who draw Henry Mountain cow bison permits. Hunters will be notified of the orientation date, time and location.

R657-5-56. Desert Bighorn and Rocky Mountain Bighorn Sheep Hunts.

(1) To hunt desert bighorn sheep or Rocky Mountain bighorn sheep, a hunter must obtain the respective permit.

(2) A person who has obtained a desert bighorn sheep or Rocky Mountain bighorn sheep permit may not obtain any other desert bighorn sheep or Rocky Mountain bighorn sheep permit or hunt during any other desert bighorn sheep or Rocky Mountain bighorn sheep hunt.

(3) Desert bighorn sheep and Rocky Mountain big horn sheep permits are considered separate once-in-a-lifetime hunting opportunities.

(4)(a) The desert bighorn sheep permit allows a person using any legal weapon to take one desert bighorn ram within the area and season specified on the permit.

(b) The Rocky Mountain sheep permit allows a person using any legal weapon to take one Rocky Mountain bighorn ram within the area and season specified on the permit.

(5) The permittee may attend a hunter orientation course. The division provides each permittee with the time and location of the course.

(6) All bighorn sheep hunters must have a spotting scope with a minimum of 15 power while hunting bighorn sheep. Any ram may be legally taken, however, permittees are encouraged to take a mature ram. The terrain inhabited by bighorn sheep is extremely rugged, making this hunt extremely strenuous.

(7) Successful hunters must deliver the horns of the bighorn sheep to a division office within 72 hours of leaving the hunting area. A numbered seal will be permanently affixed to the horn indicating legal harvest.

R657-5-57. Rocky Mountain Goat Hunts.

(1) To hunt Rocky Mountain goat, a hunter must obtain a Rocky Mountain goat permit.

(2) A person who has obtained a Rocky Mountain goat permit may not obtain any other Rocky Mountain goat permit or hunt during any other Rocky Mountain goat hunt.

(3) Any goat may be legally taken, however, permittees are encouraged to take a mature goat. A mature goat is a goat older than two years of age, as determined by counting the annual rings on the horn.

(4) The goat permit allows a person using any legal weapon to take one goat within the area and season specified on the permit.

(5) All goat hunters must have a spotting scope with a minimum of 15 power while hunting goats. The terrain inhabited by Rocky Mountain goat is extremely rugged making this hunt extremely strenuous. The goat's pelage may be higher quality later in the hunting season.

(6) Successful hunters must report the harvest to a division office within 72 hours of leaving the hunting area.

R657-5-58. Depredation Hunter Pool Permits.

(1) When deer, elk or pronghorn are causing damage, antlerless control hunts not listed in the proclamation of the Wildlife Board for taking big game may be held. These hunts occur on short notice, involve small areas, and are limited to only a few hunters.

(2) Hunters are called from a list of unsuccessful permittees or other resident hunters who have applied for depredation hunts.

(3)(a) Application does not affect eligibility for antlerless or other type hunts. However, hunters who participate in any deer, elk, or pronghorn depredation hunt may not possess an additional antlerless permit for that species during the same year.

(b) Hunters with depredation permits for doe pronghorn or antlerless deer and elk may not possess any other permit for those species, except hunters may possess a buck deer permit and a depredation antlerless deer permit.

(4) The division may contact hunters to participate in a depredation hunt prior to the general hunt for a given species of big game. Hunters who do not possess an antlerless deer, elk, or pronghorn permit may purchase an appropriate permit.

(5) Applications must be sent to the appropriate regional division office for the area requested.

(6) Applications must be received by the date published in the proclamation of the Wildlife Board for taking big game.

R657-5-59. Antlerless Application - Deadlines.

(1) Applications are available from license agents and division offices.

(2) Residents may apply in the drawing for the following permits:

(a) antlerless deer;

(b) antlerless elk;

(c) doe pronghorn; and

(d) antlerless moose.

(3) Nonresidents may apply in the drawing for the following permits:

(a) antlerless deer;

(b) antlerless elk;

(c) doe pronghorn; and

(d) antlerless moose, if permits are available during the current year.

(4) Residents and nonresidents may draw an antlerless permit for each species, except any person who obtained a bull elk, buck pronghorn, or bull moose permit may not apply for an antlerless elk, doe pronghorn, or antlerless moose permit,

respectively.

(5) Only a resident may apply for or obtain a resident permit and only a nonresident may apply for or obtain a nonresident permit, except as provided in Subsections R657-5-63(3) and R657-5-65(1).

(6) A Wildlife Habitat Authorization may be purchased before applying, or the Wildlife Habitat Authorization will be issued to the applicant upon successfully drawing a permit.

(7)(a) Applications must be mailed by the date prescribed in the antlerless addendum to the proclamation of the Wildlife Board for taking big game. Applications filled out incorrectly or received later than the date prescribed in the antlerless addendum to the proclamation of the Wildlife Board for taking big game may be rejected. Late applications may be returned unopened.

(b) If an error is found on an application, the applicant may be contacted for correction.

(8) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. To avoid disappointment and wasting the permit and fee if access is not obtained, hunters should get permission before applying. The division does not guarantee access and does not have the names of landowners where hunts occur.

R657-5-60. Fees for Antlerless Applications.

(1) Each application must include:

(a) the permit fee for each species applied for;

(b) a $5 nonrefundable handling fee for each species applied for; and

(c) the Wildlife Habitat Authorization fee, if it has not yet been purchased.

(2)(a) Personal checks, money orders, cashier's checks and credit cards are accepted from residents.

(b) Money orders, cashier's checks and credit cards are accepted from nonresidents. Personal checks are not accepted from nonresidents.

(3)(a) Credit cards will be accepted on the antlerless drawing.

(b) Credit cards must be valid at least 30 days after the drawing results are posted.

(c) If applicants are applying as a group, all fees for all applicants in that group must be charged to one credit card.

(d) Handling fees are charged to the credit card when the application is processed. Permit fees are charged after the drawing, if successful.

(e) Payment to correct an invalid or refused credit card must be made with a cashier's check or money order for the full amount of the application fees plus any permits requested.

(4) An application is voidable if the check is returned unpaid from the bank or the credit card is invalid or refused.

R657-5-61. Antlerless Big Game Drawing.

(1) The antlerless drawing results are posted at the Lee Kay Center, Cache Valley Hunter Education Center and division offices on the date published in the antlerless addendum to the proclamation of the Wildlife Board for taking big game.

(2) Permits are drawn in the order listed in the antlerless addendum to the proclamation of the Wildlife Board for taking big game.

(3) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

R657-5-62. Antlerless Application Refunds.

(1) Unsuccessful applicants, who applied with a check or money order will receive a refund in September.

(2) Unsuccessful applicants, who applied with a credit card, will not be charged for a permit.

(3) The handling fees are nonrefundable.

R657-5-63. Permits Remaining After the Antlerless Drawing.

(1) Permits remaining after the antlerless drawing are sold only by mail or on a first-come, first-served basis beginning and ending on the dates provided in the antlerless addendum to the proclamation of the Wildlife Board for taking big game. These permits may be purchased by either residents or nonresidents.

(2) The same application form used for the antlerless drawing must be used when applying for remaining permits by mail.

(3) Applications are available from division offices and license agents.

KEY: wildlife, game laws, big game seasons*

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R657. Natural Resources, Wildlife Resources.

R657-37. Cooperative Wildlife Management Units for Big Game.

R657-37-1. Purpose and Authority.

(1) Under authority of Section 23-23-3, this rule provides the standards and procedures applicable to Cooperative Wildlife Management units organized for the hunting of big game.

(2) Cooperative Wildlife Management units are established to:

(a) provide income to landowners;

(b) create satisfying hunting opportunities;

(c) increase wildlife resources;

(d) provide adequate protection to landowners who open their lands for hunting; and

(e) provide the general public access to private and public lands for hunting big game within a Cooperative Wildlife Management Unit.

R657-37-2. Definitions.

(1) Terms used in this rule are defined in Sections 23-13-2 and 23-23-2.

(2) In addition:

(a) "General public" means all persons except landowner association members, landowner association operators and their spouse or dependant children.

(b) "Landowner association member" means a landowner or an organization of owners of private land who sign the Cooperative Wildlife Management Unit application form.

(c) "Landowner association operator" means a person designated by a landowner association to operate the Cooperative Wildlife Management Unit.

(d) "Voucher" means a document issued by the division to a landowner, landowner association, or Cooperative Wildlife Management Unit operator, allowing a landowner, landowner association, or Cooperative Wildlife Management Unit operator to designate who may purchase a Cooperative Wildlife Management Unit big game hunting permit from a division office.

R657-37-3. Operation by Landowner Association.

(1)(a) Cooperative Wildlife Management units must be operated by a landowner or landowners who own land within the Cooperative Wildlife Management Unit or a landowner association operator who leases or otherwise controls hunting on land within the Cooperative Wildlife Management Unit.

(b) A landowner or landowner association may appoint Cooperative Wildlife Management unit agents to protect private property within the Cooperative Wildlife Management Unit, however the landowner or landowner association must assume ultimate responsibility for the operation of the Cooperative Wildlife Management Unit.

(2)(a) The minimum allowable acreage for a Cooperative Wildlife Management Unit is 10,000 contiguous acres.

(b) The Wildlife Board may approve a Cooperative Wildlife Management Unit that is less than 10,000 contiguous acres only if:

(i) significant populations of big game are using the private land for an extended period of time;

(ii) the private land block is large enough to support a huntable unit; and

(iii) it is in the best interest of wildlife, landowners, and the public.

(3)(a) Cooperative Wildlife Management Units organized for hunting big game, shall consist of private land to the extent practicable.

(b) Public land may be included within a Cooperative Wildlife Management Unit provided:

(i) the public land is completely surrounded by private land or is otherwise inaccessible to the general public;

(ii) including public land is necessary to establish a readily identifiable boundary; or

(iii) including public land is necessary to achieve big game management objectives.

(c) If any public land is included within a Cooperative Wildlife Management Unit, the landowner association shall meet applicable federal and state land use requirements on the public land.

(4) The Wildlife Board shall increase the number of permits or hunting opportunities made available to the general public to reflect the proportional habitat on public land to private land within the Cooperative Wildlife Management Unit.

(5) At least every five years, Cooperative Wildlife Management units containing public land shall be reviewed by the Regional Advisory Councils and the Wildlife Board.

(6) The landowner association shall consider the following in the operation of a Cooperative Wildlife Management Unit:

(a) the seasonal movement and distribution of big game on their land;

(b) hunt strategies that shall compliment the management plan for the entire unit; and

(c) work with adjacent landowners outside the Cooperative Wildlife Management Unit being impacted by big game effected by the operation of the unit.

(7)(a) A landowner association or landowner association operator may enter into reciprocal agreements with any other landowner association or landowner association operator to allow hunters who have obtained a Cooperative Wildlife Management Unit permit to hunt within each other's Cooperative Wildlife Management units as provided in Subsection R657-37-4(8).

(b) If a person is authorized to hunt in one or more Cooperative Wildlife Management units as provided in Subsection (a), written permission from the landowner association must be in the person's possession while hunting.

(8)(a) A landowner association or landowner association operator shall provide any person that has obtained a permit, including general public permittees, a comparable hunting opportunity in terms of hunting area and number of days to hunt big game.

(b) A person who has obtained a Cooperative Wildlife Management Unit permit may hunt only in the Cooperative Wildlife Management Unit for which the permit is issued, except as provided under Subsection (7)(b).

(9) Each landowner association shall post all boundaries of the Cooperative Wildlife Management Unit in accordance with Section 23-23-7(6).

R657-37-4. Application for Certificate of Registration.

(1) Applications for Cooperative Wildlife Management units are available from division offices and division wildlife biologists.

(2) In addition to the application, the landowner association shall provide:

(a) a management plan specifying the big game management objectives for the Cooperative Wildlife Management Unit, which must be consistent with division objectives for the respective big game units;

(b) a petition containing the signature and acreage of each participating landowner agreeing to establish and operate the Cooperative Wildlife Management Unit as provided in this rule and Title 23, Chapter 23 of the Wildlife Resources Code;

(c) a 1:100,000 USGS land ownership map of the proposed Cooperative Wildlife Management Unit;

(d) the name of the designated landowner association operator; and

(e) a $5 nonrefundable handling fee.

(3) The division shall, upon request of the applicant, provide assistance in preparing the management plan and map for the proposed Cooperative Wildlife Management Unit.

(4) Applications must be completed and returned to the division wildlife biologist in the region that the Cooperative Wildlife Management Unit is to be established prior to August 1.

(5) The division may return any application that is incomplete or completed incorrectly.

(6) The division shall forward the application and required documentation to the Wildlife Board for consideration.

(7) Upon receipt of the application, required documentation and appropriate fee the Wildlife Board may:

(a) issue a certificate of registration authorizing the landowner association to operate a Cooperative Wildlife Management Unit; or

(b) deny the application and provide the landowner association with reasons for the denial.

(8)(a) A landowner association or landowner association operator must request an amendment to the original certificate of registration for any variation of the following:

(i) season dates;

(ii) method of harvest;

(iii) permit and tag allocation;

(iv) additional property to be included within the Cooperative Wildlife Management Unit; and

(v) any other matter related to the management and operation of the Cooperative Wildlife Management Unit not originally included in the certificate of registration.

(b) Requests for an amendment to a certificate of registration must be made in writing and submitted to the appropriate division regional supervisor and wildlife manager.

(c) The Wildlife Board must approve any variation to the original certificate of registration except:

(i) a request to allow hunters who have obtained a Cooperative Wildlife Management Unit permit to hunt within each other's Cooperative Wildlife Management unit. Approval may be granted by the regional supervisor and the regional wildlife manager.

(d) Upon approval, an amendment to the original certificate of registration shall be issued in writing.

(9) The Wildlife Board shall consider any violation of the provisions of Title 23, Wildlife Resources Code and any information provided by the division, landowners, and the public in determining whether to issue a certificate of registration for a Cooperative Wildlife Management Unit.

(10) Cooperative Wildlife Management Unit certificates of registration are issued on an annual basis and shall expire on January 31.

R657-37-5. Renewal of a Certificate of Registration.

(1) The landowner association may request the Wildlife Board to renew a certificate of registration for a Cooperative Wildlife Management Unit by completing and submitting a renewal application and a nonrefundable $5 handling fee.

(2)(a) Any changes from the previous year's certificate of registration must be indicated on the renewal application.

(b) The Wildlife Board shall consider the previous performance of the Cooperative Wildlife Management Unit, including the actions of the landowner, landowner association and landowner association operator when reviewing renewal of the certificate of registration.

(3)(a) If the landowner association requests additional land to be included in the Cooperative Wildlife Management Unit, the application must contain:

(i) the signatures of the additional landowners; and

(ii) a 1:100,000 USGS land ownership map showing the new proposed boundary.

(b) If the landowner association requests land to be withdrawn from the Cooperative Wildlife Management Unit, the application must include:

(i) a copy of the previously submitted petition with the appropriate landowners' signatures deleted; and

(ii) a 1:100,000 USGS land ownership map showing the new proposed boundary.

(4) Renewal applications must be submitted to the division prior to September 1.

(5) The division shall forward the renewal application to the Wildlife Board for consideration.

(6) Upon receipt of the application, required documentation and appropriate fee the Wildlife Board may:

(a) issue a certificate of registration authorizing the landowner association to operate a Cooperative Wildlife Management Unit; or

(b) deny the application and provide the landowner association with reasons for the denial.

(7) The Wildlife Board shall consider any violation of the provisions of Title 23, Wildlife Resources Code, Rule R657-37, any of the stipulations specified on the certificate of registration, and any information provided by the division, a member of a Cooperative Wildlife Management Unit, or the public in determining whether to renew a certificate of registration for a Cooperative Wildlife Management Unit.

R657-37-6. Cooperative Wildlife Management Unit Agents.

(1) A landowner association may appoint Cooperative Wildlife Management Unit agents to monitor access and protect the private property of the Cooperative Wildlife Management Unit.

(2) Each Cooperative Wildlife Management Unit agent shall wear or have in possession a form of identification prescribed by the Wildlife Board which indicates the agent is a Cooperative Wildlife Management Unit agent.

(3) A Cooperative Wildlife Management Unit agent may refuse entry into the private land portions of a Cooperative Wildlife Management Unit to any person, except owners of land within the unit and their employees, who:

(a) do not have in their possession a Cooperative Wildlife Management Unit permit;

(b) endangers or has endangered human safety;

(c) damages or has damaged private property within a Cooperative Wildlife Management Unit; or

(d) fails or has failed to comply with reasonable rules of a landowner association.

(4) Cooperative Wildlife Management Unit agents may not refuse entry to the general public onto any public land within the boundaries of a Cooperative Wildlife Management Unit that is otherwise accessible to the public for purposes other than hunting big game for which the Cooperative Wildlife Management Unit is authorized.

(5) In performing the functions described in this section, a Cooperative Wildlife Management Unit agent shall comply with the relevant laws of this state.

R657-37-7. Permit Allocation.

(1) The division shall issue Cooperative Wildlife Management Unit permits for hunting big game to permittees:

(a) qualifying through a general public drawing; or

(b) named by the landowner or landowner association operator.

(2) Landowner, landowner association, or landowner association operators shall be issued vouchers that may be used to purchase hunting permits from division offices.

(3) The division and the landowner association shall, in accordance with the tables provided in Subsection (4), jointly determine:

(a) the total number of permits to be issued for the Cooperative Wildlife Management Unit; and

(b) the number of permits that may be offered by the landowner association to the general public as defined in Subsection R657-37-2(c).

(4) Permits may be allocated as follows, with a minimum of one permit that must be offered to the general public:

TABLE 1

MOOSE AND PRONGHORN
Posted Hunting Unit's Share

Option	Antlered	Antlerless
1	60%	0%
2	60%	40%

Public's Share

Option	Antlered	Antlerless
1	40%	0%
2	40%	60%

TABLE 2

ELK AND DEER
Posted Hunting Unit's Share

Option	Antlered	Antlerless
1	90%	0%
2	85%	25%
3	80%	40%
4	75%	50%
5	50%	0%

Public's Share

Option	Antlered	Antlerless
1	10%	100%
2	15%	75%
3	20%	60%
4	25%	50%
5	50%	0%

(5) If the division recommends that antlerless deer or elk should not be taken within a Cooperative Wildlife Management Unit because of decreased or declining populations, up to 90% of the permits recommended for that Cooperative Wildlife Management Unit may be allocated to the landowner association. At least 10% of the permits allocated to the Cooperative Wildlife Management Unit shall be offered to the public through the big game drawings.

(6) Landowners or landowner associations shall provide access free of charge to any person who has received a Cooperative Wildlife Management Unit permit through the general public big game drawings, except as provided in Section 23-23-11.

(7) If the division and the landowner association disagree on the number of permits to be issued, the number of permits allocated for a species or sex of big game, or the method of take, the Wildlife Board shall determine the number of permits to be issued based on the biological needs of the big game herds, including available forage, depredation, and other mitigating factors.

(8) A Cooperative Wildlife Management Unit permit entitles the holder to hunt the species and sex of big game specified on the permit and only in accordance with certificate of registration and the rules and proclamations of the Wildlife Board.

(9) Vouchers for antlerless permits may be designated by landowner associations to any eligible person regardless of whether the person has obtained a bull or buck permit through the general public big game drawings.

(10) A person may not obtain more than one permit for each species of big game, except as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

(11) A complete list of the current Cooperative Wildlife Management units, big game hunts, and the date, time, and number of permits available for public drawing shall be published in the proclamation of the Wildlife Board for taking big game.

R657-37-8. Permit Cost.

The fee for permits allocated to any Cooperative Wildlife Management Unit is the same as the applicable:

(a) limited entry permit fee for elk and pronghorn;

(b) general season, limited entry or premium limited entry permit fee for deer; and

(c) once-in-a-lifetime permit fee for moose.

R657-37-9. Possession of Permits and License by Hunters - Restrictions.

(1) A person may not hunt in a Cooperative Wildlife Management Unit without having in his possession:

(a) a valid Cooperative Wildlife Management Unit permit; and

(b) the necessary hunting licenses, permits, tags, and stamps.

(2) A Cooperative Wildlife Management Unit permit:

(a) entitles the holder to hunt only in the unit specified on the permit pursuant to the rules of the Wildlife Board and does not entitle the holder to hunt on any other public or private land, except as provided under Subsection R657-37-3(6)(b);and

(b) constitutes written permission for trespass as required under Section 23-20-14.

(3) Prior to hunting on a Cooperative Wildlife Management Unit each permittee must:

(a) contact the relevant landowner association and request the Cooperative Wildlife Management Unit rules and requirements; and

(b) make arrangements with the landowner association for the hunt.

R657-37-10. Season Lengths.

(1) A landowner association or landowner association operator may arrange for permittees to hunt on the Cooperative Wildlife Management Unit during the following dates:

(a) general season buck deer, general season bull elk, pronghorn, and moose seasons may be established September 1

through October 31;

(b) archery buck deer and archery bull elk seasons may be established beginning with opening of the general archery deer season through October 31;

(c) muzzleloader deer and elk seasons may be established September 1 through the end of the state muzzleloader season;

(d) antlerless elk seasons may be established August 15 through January 31; and

(e) antlerless deer seasons may be established August 15 through December 31.

(2) The Wildlife Board may make variances to the seasons provided in Subsection (1) for good cause.

R657-37-11. Rights-of-Way.

Landowner associations may not restrict established public access to public land enclosed by the Cooperative Wildlife Management Unit.

KEY: wildlife, cooperative wildlife management unit
January 15, 1998 23-23-3

R657. Natural Resources, Wildlife Resources.
R657-38. Dedicated Hunter Program.
R657-38-1. Purpose and Authority.

(1) Under the authority of Section 23-14-18, this rule provides the standards and requirements for obtaining a certificate of registration to:

(a) maximize opportunity for recreational deer hunting;

(b) increase public participation in wildlife management programs and projects that are beneficial to wildlife and the division; and

(c) provide courses in hunter ethics and wildlife management principles.

R657-38-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Education course" means a course of instruction provided by the division in hunter ethics and wildlife management principles.

(b) "Hunt area" means an area prescribed by the Wildlife Board where general archery, general season or general muzzleloader deer hunting is open to permit holders for taking deer.

(c) "Participant" means a person who has obtained and signed a certificate of registration for the Dedicated Hunter Program.

(d) "Program" means the Dedicated Hunter Program, a program administered by the division as provided in this rule.

(e) "Wildlife project" means a project designed by the division, or any other individual or entity and pre-approved by the division, that provides wildlife habitat protection or enhancement on public or private lands, improves hunting or fishing access, or other projects or activities that benefit wildlife or directly benefits the division.

(f) "Wildlife Project manager" means an employee of the division, or person approved by the division, responsible for supervising a wildlife project and maintaining and reporting records of service hours to the division.

R657-38-3. Certificate of Registration Required.

(1)(a) To participate in the program a person must sign and obtain a certificate of registration from the division.

(b) No more than ten thousand certificates of registration for the program may be in effect at any given time.

(c) Each participant must provide proof of having attended an education course before the division may issue the certificate of registration for the program.

(d) A certificate of registration to participate in the program may not be issued to any person after the bucks, bulls and once-in-a-lifetime drawing results are posted.

(2) Each certificate of registration is valid for a three-year period.

(3)(a) Any person who is 14 years of age or older may obtain a certificate of registration. A person 13 years of age may obtain a certificate of registration if the date of that person's 14th birthday is before the end of the annual muzzleloader season set for the calendar year in which the certificate of registration is issued.

(b) Any person who is 17 years of age or younger before the beginning date of the annual archery deer hunt shall pay the youth participant fees.

(c) Any person who is 18 years of age or older on or before the beginning date of the annual archery deer hunt shall pay the adult participant fees.

(4) A certificate of registration authorizes the participant an opportunity to receive annually a permit to hunt during the general archery, general season and general muzzleloader deer hunts. The permit may be used during the dates and within the hunt area boundaries established annually by the Wildlife Board in the proclamation for taking big game.

(5) Except as provided in Subsection R657-38-7(8), a participant entering the program may take two deer within three years.

(6) A participant may take only one deer in any one year, except as provided in Subsection R657-38-7(8).

(7)(a) In addition to the certificate of registration, the participant must purchase a wildlife habitat authorization each year.

(b) Lifetime license holders are not required to purchase an annual wildlife habitat authorization pursuant to Section 23-19-42.

(8) The certificate of registration must be signed by the participant and a division representative. The certificate of registration is not valid without the required signatures.

(9) The participant and holder of the certificate of registration must have a valid permit in possession while hunting.

(10) Certificates of registration are not transferable and expire three years from the date of issuance.

(11) Certificates of registration will not be issued to any person who has previously obtained a certificate of registration if that person has failed to provide the service requirements or fees.

R657-38-4. General Season Permits.

(1) Participants may hunt during the general archery, general season and general muzzleloader deer hunts within the hunt area and during the season dates prescribed in the proclamation of the Wildlife Board for taking big game.

(2) Participants must designate a regional hunt choice on joining the program.

(3)(a) The division shall, prior to the annual bucks, bulls and once-in-a lifetime application period, send a form to each participant.

(b) The participant shall fill out this form indicating the participant's regional general buck deer hunt choice.

(c) The form must be returned by mail to the Salt Lake Division office and must be received prior to the posting of the bucks, bulls and once the proclamation of the Wildlife Board for taking big game.

(d) If the form is not received by the division prior to the posting of the bucks, bulls and once-in-a-lifetime drawing and the participant has not obtained a permit by mail, the participant must obtain a permit from a division office beginning on the date general deer permits are made available to the general public.

(4) Participants must notify the division of any change of mailing address in order to receive a permit by mail.

(5) Except as provided in Subsection R657-38-7(8), only one deer may be taken in any one year.

(6)(a) Lifetime license holders may participate in the dedicated hunter program.

(b) Upon signing the certificate of registration, the lifetime license holder agrees to forego any rights to receive a general archery, general season or general muzzleloader permit as provided in Section 23-19-17.5.

(c) A refund or credit is not issued for the general archery, general season or general muzzleloader permit.

(7) A participant may not exchange permits once the permit is issued and any of the specified general hunts have begun.

R657-38-5. Education Course.

(1)(a) The division shall provide an annual education course.

(b) Completion of an education course is mandatory prior to obtaining a certificate of registration for the program.

(2)(a) The education course shall explain the program in detail to give a prospective participant a reasonable understanding of the program as well as hunter ethics and wildlife management principles.

(3) Education courses are scheduled by regional division offices.

(4) Proof of having completed the education course is provided to the prospective participant upon completion of the education course. Certificates of registration are not issued without verification of having completed the education course.

R657-38-6. Wildlife Projects.

(1)(a) Each participant in the program shall:

(i) provide no fewer than eight hours of service annually working on a wildlife project or other division approved program or activity; or

(ii) pay a fee of $18.75 for each hour not completed.

(b) Residents may not substitute more than 16 of the 24 total required service hours. Nonresidents may substitute all of the 24 total required service hours.

(c) The division may, upon request, approve a person who is physically unable to provide service by working on a wildlife project to provide other forms of service.

(2) Wildlife projects shall be designed by the division, or any other individual or entity and pre-approved by the division.

(3)(a) Wildlife projects may occur anytime during the year as determined by the division.

(b) The division shall publicize the dates, times, locations and description of approved projects and activities at regional offices.

(4) Participants shall sign up at least two weeks before the date of the wildlife project or activity by notifying a regional division office.

(5) Proof of the number of hours worked shall be provided to the participant.

(6) If a participant fails to fulfill the service requirement for any year of participation, the participant will not be issued a permit for that year. The participant may obtain a permit for subsequent years upon completion of the service requirements due or payment of the fee in lieu thereof.

(7) The wildlife project manager shall keep a receipt of all participants who attend the wildlife project and the number of hours worked. A copy of the receipt shall be returned by the participant for record keeping purposes.

R657-38-7. Obtaining Other Permits.

(1) Participants may apply for or obtain limited entry and cooperative wildlife management unit buck deer permits as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

(2) If the participant is successful in drawing a limited entry rifle buck deer permit, the participant may use the permit in the prescribed area:

(a) during the season dates listed on the permit; and

(b) during the dates prescribed for the general archery, general season and general muzzleloader hunts.

(3) The division may exclude multiple season opportunities on specific units due to extenuating circumstances on that specific unit.

(4) If the participant is successful in drawing a limited entry archery or muzzleloader buck deer permit, the participant may use the permit in the prescribed area during the season dates listed on the permit.

(5) The permit must be on the person while hunting.

(6) Obtaining a limited entry or cooperative wildlife management unit buck deer permit does not authorize a participant to take an additional deer.

(7) Participants who draw a cooperative wildlife management unit permit may hunt on the cooperative wildlife management unit only during the dates determined by the landowner/operator.

(8)(a) Participants may apply for or obtain antlerless deer permits as provided in Rule R657-5 and the antlerless addendum to the proclamation of the Wildlife Board for taking big game.

(b) Antlerless permits do not count against the number of

tags issued pursuant to this program.

R657-38-8. Reporting Requirements.

(1) Each participant must annually report to the division:

(a) whether a deer was taken; and

(b) any other information requested by the division.

(2) The report must be submitted to the division annually by December 15.

(3) Any tag that is not used to tag a deer must be returned to the division with the report. If the unused tag is not submitted with the report, the permit shall be considered to have been filled.

(4) The division shall make report forms available to participants.

R657-38-9. Contractual Obligations.

(1) In addition to incorporating the provisions of this rule, the certificate of registration shall expressly state the terms of the program including the following:

(a) The participant shall agree to perform the required service hours working for the division or other organizations as approved by the division. The hours shall be completed during the times prescribed by the division. If the participant is unable to perform the required service hours, a fee of $18.75 shall be paid for each hour not completed. Residents may not substitute more than 16 of the 24 total required service hours. Nonresidents may substitute all of the 24 total required service hours. The service hours shall be performed or a fee paid even in the event the certificate of registration is revoked or the participant withdraws from the program. The participant shall also agree to pay court costs and attorney fees associated with collecting any unpaid balance;

(b) The participant shall agree to attend at least one regional advisory council meeting annually; and

(c) The participant shall agree not to purchase or obtain, or attempt to purchase or obtain, any buck deer permit in Utah, except as allowed under the provisions of this rule until after the expiration date of the certificate of registration.

(2) In addition to the terms provided in Subsection (1), the division may require the participant to agree to other provisions consistent with this rule for the administration of this program.

R657-38-10. Dedicated Hunter Program Drawing.

(1) Any unused permit may be entered into a drawing.

(2) One limited entry deer permit and one limited entry elk permit shall be offered through the drawing for each 250 permits entered.

(3) The results of the drawing shall be published at division offices.

(4)(a) Permits are drawn in February.

(b) Successful participants are notified by mail.

(5)(a) The limited entry deer permits may be used within the boundaries of the limited entry deer hunt area and during the dates specified in the proclamation of the Wildlife Board for taking big game.

(b) The limited entry elk permits may be used within the boundaries of the limited entry hunt area and during the dates specified in the proclamation of the Wildlife Board for taking big game.

R657-38-11. Revocation.

(1) A permit and tag may not be issued to any participant who:

(a) does not perform the annual service requirement;

(b) does not attend a regional advisory council meeting pursuant to Subsection R657-38-9(1)(b); or

(c) violates the terms of the certificate of registration.

(2) The division may revoke or suspend a certificate of registration as provided in Section 23-19-9.

KEY: wildlife, hunting, recreation, ethics
January 15, 1998 23-14-18

R710. Public Safety, Fire Marshal.

R710-7. Concerns Servicing Automatic Fire Suppression Systems.

R710-7-1. Adoption of Codes.

Pursuant to Section 53-7-204, Utah Code Annotated 1953, the Utah State Fire Prevention Board adopts rules to provide regulation to those concerns that service Automatic Fire Suppression Systems. These rules do not apply to standpipe systems, deluge systems, or automatic fire sprinkler systems.

There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association, Standard 12, Carbon Dioxide Extinguishing Systems, 1993 edition in whole; N.F.P.A., Standard 12A, Halon 1301 Fire Extinguishing Systems, 1997 edition in whole; N.F.P.A., Standard 12B, Halon 1211 Fire Extinguishing Systems, 1990 edition in whole; N.F.P.A., Standard 17, Dry Chemical Extinguishing Systems, 1994 edition in whole; N.F.P.A., Standard 17A, Wet Chemical Extinguishing Systems, 1994 edition in whole; N.F.P.A., Standard 96, Ventilation Control and Fire Protection of Commercial Cooking Operations, 1994 edition in whole; N.F.P.A., Standard 2001, Clean Agent Fire Extinguishing Systems, 1996 edition in whole. A copy of these pamphlets is on file in the Office of the State Fire Marshal. The definitions contained in these pamphlets shall pertain to these regulations.

1.2 Validity

If any section, subsection, sentence, clause, or phrase, of these rules is, for any reason, held to be unconstitutional, contrary to statute, or exceeding the authority of the SFM, such decision shall not affect the validity of the remaining portion of these rules.

1.3 Systems Prohibited

No person shall market, distribute, sell, install or service any automatic fire suppression system in this state, unless:

(a) It complies with these rules.

(b) It has been tested by, and bears the label of a testing laboratory which is accepted by the SFM as qualified to test automatic fire suppression systems.

(c) Automatic fire suppression systems using dry chemical, manufactured before November 1994, shall not be installed where grease laden vapors are produced. Systems in use prior to November 1994, are allowed to remain in service in the original installation.

1.4 Copies of the above listed codes are on file in the Office of Administrative Rules and the Office of the State Fire Marshal.

R710-7-2. Definitions.

"Annual" means a period of one year or 365 days.

"Board" means Utah Fire Prevention Board.

"Branch Office" means any location, other than the primary business location, where business license, telephone, advertising and servicing equipment is utilized.

"Certificates of Registration" means a written document issued by the SFM to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

"Concern" means a person, firm, corporation, partnership, or association, licensed by the SFM.

"Employee" means those persons who work for a licensed concern which may include but are not limited to assigned agents and others who work on a contractual basis with a licensee using service tags of the licensed concern.

"Hydrostatic Test" means subjecting any cylinders requiring periodic pressure testing procedures specified in these rules.

"Inspection Authority" means the local fire authority, or the SFM, and their authorized representatives.

"License" means a written document issued by the SFM authorizing a concern to engage in the business of servicing automatic fire suppression systems.

"N.F.P.A." means National Fire Protection Association.

"Recognized Testing Laboratory" means a State Fire Marshal list of acceptable labs.

"Service" means a complete check of an automatic fire suppression system which includes the required service procedures set forth by a manufacturer of an approved system or the minimum service requirements as provided as set forth in adopted N.F.P.A. standards.

"System" means an Automatic Fire Suppression System.

"SFM" means Utah State Fire Marshal.

"UCA" means Utah State Code Annotated, 1953 as amended.

R710-7-3. Licensing.

3.0 License Required

No person or concern shall engage in the business of selling, installing, servicing, repairing, testing or modifying any automatic fire suppression system without obtaining a license from the SFM, pursuant to these rules, expressly authorizing such concern to perform such acts.

3.1 Type of License

(a) Every license shall be identified by type. The type of license shall be determined on the basis of the act or acts performed by the licensee or any of the employees. Every licensed concern shall be staffed by qualified personnel and shall be properly equipped to perform the act or acts for the type of license issued.

(b) Licenses shall be any one, or combination of the following:

(1) Class H1 - A licensed concern which is engaged in the installation, modification, service, or maintenance of engineered and/or pre-engineered automatic fire suppression systems.

(2) Class H2 - A licensed concern which is engaged in service and maintenance only of automatic fire suppression systems to include hydrostatic testing.

3.2 Application

Application for a license to conduct business as an automatic fire suppression system concern, shall be made in writing to the SFM on forms provided by the SFM. A separate application for license shall be made for each separate place or business location of the applicant (branch office).

3.3 Signature of Applicant

The application shall be signed by the applicant. If the application is made by a partnership, it shall be signed by all partners. If the application is made by a corporation or association other than a partnership, it shall be signed by a principal officer.

3.4 Right to Enter

The application shall include written authorization by the applicant permitting the SFM and any of his authorized deputies to enter, examine, and inspect any premises, building, room or vehicle used by the applicant in the service of automatic fire suppression systems to determine compliance with the provisions of these rules. The inspection will be conducted during normal business hours, and the owner or manager shall be given a minimum of 24 hours notice before the appointed inspection. The inspection will be conducted on an annual basis, and consent to inspect will be obtained.

3.5 Issuance and Posting of License

Following receipt of the properly completed application, and compliance with the provisions of the statute and these rules, the SFM shall issue a license. Every license issued pursuant to the provisions of these rules shall be posted in a conspicuous place on the premises of the licensed concern.

3.6 Original, Valid Date

Original license shall be valid from the date of issuance through December 31 of the year in which issued. Thereafter, each license shall be renewed annually and renewals shall be valid from January 1 through December 31. Original licenses purchased after July 1 and up to November 1 can be purchased one time, at a one-half year fee. Licenses issued on or after November 1 will be valid through December 31 of the following year.

3.7 Renewal, Valid Date

Application for renewal shall be made before January 1 of each year on forms provided by the SFM. The failure to renew the license will cause the license to become invalid on January 1 of the next year.

3.8 Duplicate License

A duplicate license may be issued by the SFM to replace any previously issued license, which has been lost or destroyed, upon request.

3.9 Refusal to Renew

SFM may refuse to renew any license that is authorized, pursuant to Section 8 of these rules. The applicant will, upon such refusal, have the same rights as are granted by Section 8 of these rules to an applicant for an original license which has been denied by the SFM.

3.10 Change of Address

Every licensee shall notify the SFM, in writing, within thirty (30) days, of any change of address or location of business.

3.11 Under Another Name

No licensee shall conduct the licensed business under a name other than the name or names which appears on the license.

3.12 Hiring and Termination

Every licensed concern shall, within thirty (30) days of employment or termination of an employee or contracted agent shall notify the SFM of the name, address, and certification number of that person.

3.13 Minimum Age

No license shall be issued to any person as licensee who is under eighteen (18) years of age.

3.14 Employer Responsibility

Every concern is responsible for the acts of its employees or assigned agents relating to installation and servicing of automatic fire suppression systems.

3.15 Restrictive Use

No license shall constitute authorization for any licensee, or any of the employees or contracted agents, to enter upon, or into, any property, building, or machinery without the consent of the owner or manager. No license shall grant authorization to enforce the Uniform Fire Code or these rules.

3.16 Non-Transferable

No license issued pursuant to this section shall be transferred from one concern to another.

3.17 Registration Number

Every license shall be identified by a number, delineated as H-(number). Such number may only be transferred from one concern to another when approved by the SFM.

3.18 Minimum Materials and Equipment Required

At each business location or vehicle of the applicant where servicing work is performed the following minimum material and equipment requirements shall be maintained:

(a) Calibrated scales with ability to:

(1) Weigh gas cartridges to within 1/4 ounce of manufacturers specifications.

(2) Weigh cylinders accurately for systems being serviced.

(b) Nitrogen Pressure Filling Equipment

(1) Nitrogen Supply

(2) Pressure Regulator - 750 p.s.i. minimum

(3) Filling Adapters

(c) Dry Chemical Systems

(1) Extinguishing agents, compatible with systems serviced

(2) Fusible links

(3) Safety pins

(4) An assortment of gaskets and "O" Rings compatible with systems serviced

(5) Gas cartridges as required according to manufacture's specifications

(6) Current reference manuals, to include manufacture's service manuals

(7) Cocking or Lockout Tool

(d) Halon and CO2 Systems

(1) Have access to, or meet the requirements for a U.L. approved filling station.

(2) Have available in inventory, or have immediate access to, detectors compatible with systems serviced.

(3) Calibration equipment such as electrical testers and detector testers.

(4) Control panel components

(5) Release valves

(6) Current reference manuals

This list does not, however, include all items that may be necessary in order to conduct a complete system installation, modification or service.

3.19 Records

Accurate records shall be maintained for five years back by the licensee of all service work performed. These records shall be made available to the SFM, or authorized deputies, upon request. These records shall include the following:

(1) The name and address of all serviced locations

(2) Type of service performed

(3) Date and name of person performing the work

R710-7-4. Certificates of Registration.

4.0 Required Certificates of Registration

No person shall service any automatic fire suppression system without a certificate of registration issued by the SFM pursuant to these rules expressly authorizing such person to perform such acts.

4.1 Application

Application for a certificate of registration to work on automatic fire suppression systems shall be made in writing to the SFM on forms provided by the SFM. The application shall be signed by the applicant.

4.2 Examination

The SFM shall require all applicants for a certificate of registration to take and pass a written examination, which may be supplemented by practical tests to determine the applicant's knowledge to work on automatic fire suppression systems. Examinations will be given according to the following schedule:

(a) On the first and third Tuesdays of each month. When holidays conflict with these days, the day immediately following will be used. An appointment will be made to take an examination at least 24 hours in advance of the examination date.

(b) Examinations may be given at various field locations as deemed necessary by the SFM. Appointments for field examinations are required.

4.3 Examination - Passing Grade

To successfully pass the written examination, the applicant must obtain a minimum grade of seventy percent (70%) in each portion of the examination taken.

4.4 Contents of Examination

The examination required shall include a written test of the applicant's knowledge of the work to be performed, the provisions of these rules, and may include an actual demonstration of his ability to perform the acts indicated on the application.

4.5 Right to Contest

Every person who takes an examination for a certificate of registration shall have the right to contest the validity of individual questions of such examination. Every contention as to the validity of individual questions of the examination shall be made in writing within 48 hours after taking said examination. The decision of the SFM shall be final.

4.6 Issuance

Following receipt of the completed application, compliance with the provisions of these rules, and the successful completion of the required examination, the SFM shall issue a certificate of registration.

4.7 Original and Renewal Valid Date

Original certificates of registration will be valid from the date of issuance through December 31 of the year in which issued. Thereafter, each certificate of registration will be renewed annually and renewals will be valid from January 1 through December 31. Original certificates purchased after July 1 and up to November 1 can be purchased one time, at a one-half year fee. The failure to renew a certificate of registration will cause the certificate of registration to become invalid of January 1 of the next year. The holder of an invalid certificate of registration shall not perform any work on automatic fire suppression systems. Original certificates of registration issued on or after November 1 will be valid through December 31 of the following year.

4.8 Renewal Date

Application for renewal will be made before January 1st of each year. Application for renewal will be made in writing on forms provided by the SFM.

4.9 Re-examination

Every holder of a valid certificate of registration will take a re-examination every five (5) years, from the date of original certificate, to comply with the provisions of Section 4.2 of these rules.

4.10 Refusal to Renew

The SFM may refuse to renew any certificate of registration for the reasons that is authorized pursuant to Section 8 of these rules. The applicant will, upon such refusal, have the same rights as are granted by Section 8 of these rules to an applicant for an original certificate of registration which has been denied by the SFM.

4.11 Inspection

The holder of a certificate of registration will submit such certificate for inspection, upon request of the SFM, any authorized deputies, or any local fire official.

4.12 Change of Address

Any change of address of any holder of a certificate of registration will be reported by the registered person to the SFM within thirty (30) days of such change. Such change will also be made by the holder of the certificate of registration on the reverse side of the certificate of registration card.

4.13 Duplicate

A duplicate certificate of registration may be issued by the SFM to replace any previously issued certificate which has been lost or destroyed.

4.14 Minimum Age

No certificate of registration shall be issued to any person who is under eighteen (18) years of age.

4.15 Restrictive Use

(a) No certificate of registration will constitute authorization for any person to enter upon or into any property or building.

(b) No certificate of registration will constitute authorization for any person to enforce any provisions of these rules or the Uniform Fire Code.

(c) Regardless of the acts authorized to be performed by the licensed concern, only those acts for which the applicant for a certificate of registration has qualified will be permissible by such applicant.

4.16 Non-Transferable

Certificates of registration will not be transferable. Individual certificates of registration will be carried by the person to whom issued.

4.17 Limited Issuance

No certificate of registration will be issued to any person unless that person is a licensee or an employee of a licensed concern.

4.18 New Employees

New employees of a licensed concern may perform the various acts while under the direct supervision of a person

holding a valid certificate of registration for a period not to exceed forty-five (45) days from the initial date of employment.

4.19 Certificate Identification

Every certificate will be identified by a number, delineated as HE-(number).

R710-7-5. Service Tags and Labels.

5.0 Size and Color

Tags shall be not more than five and one-half inches (5-1/2") in height, nor less than four and one-half inches (4-1/2") in height, and not more than three inches (3") in width, nor less than two and one-half inches (2-1/2") in width. Tags may be any color except red.

5.1 Attaching Tag

One service tag will be attached to each automatic fire suppression system in such a position as to be conveniently inspected

5.2 Signature and Certificate Number

(a) The signature and certificate of registration number of the person performing the work shall be signed legibly on the service tag.

(b) All information pertaining to complete date, type of servicing, and type of system will be indicated on the tag by perforations in the appropriate space provided.

5.3 New Tag

A new service tag will be attached to a properly functioning system each time service is performed. A system not in compliance shall not receive a service tag, but shall receive a non-compliance tag as required in Section 5.8.

5.4 Tag Warning

The following wording shall be placed at the top or reinforced ring end of every tag: "DO NOT REMOVE, BY ORDER OF THE STATE FIRE MARSHAL".

5.5 Removal

No person shall deface, modify, alter or remove any active service label or tag attached to or required to be attached to any automatic fire suppression system.

5.6 Service Tag Information

All service tags shall be designed as required by the SFM.

5.7 Six Year Maintenance and Hydrostatic Test Labels

(a) Six year maintenance and hydrostatic test labels will be affixed by a heatless process. The labels will be applied only when the system is recharged or undergoes six year maintenance servicing or hydrostatic testing.

(b) Six year maintenance and hydrostatic test labels shall be durable to withstand the effects of weather and adverse conditions.

(c) Six year maintenance and hydrostatic test labels will be designed as shown below:

EXAMPLE OF SIX YEAR AND HYDROSTATIC TEST LABEL

5.8 Non-Compliance Tags

(a) Non-compliance tags will be affixed to any system failing to meet service specifications and will be placed in a conspicuous location on that system.

(b) Non-compliance tags shall be red in color.

(c) A system shall receive a non-compliance tag, when the system fails to fully comply with manufactures specifications or these rules.

(d) After placing the non-compliance tag on the system, the service person shall notify the local fire chief or his authorized representative. The service person shall also furnish a copy of the service report to the authority having jurisdiction.

(e) Non-compliance tags will be designed as required by the SFM.

R710-7-6. Requirements For All Approved Systems.

6.0 General

For the purpose of these rules, every automatic fire suppression system required by any governmental statute, ordinance, or rule, will conform to the provisions of this section.

6.1 Service

(a) Maintenance will be conducted on extinguishing systems at least every six months or immediately after use or activation.

(b) When fusible links are a required portion of the system, fusible links will be replaced yearly or as required by the manufacturer of the system.

(c) Fusible links will show the date when installed by year only.

(d) Fusible links will not be used after February 1 of the next year showing a previous year's date.

6.2 Interchanging of Parts

Interchanging of parts from different manufactured systems is prohibited. Parts shall be specifically listed and compatible for use with the designed system.

6.3 Return of parts

All replaced parts to the system serviced will be returned to the system owner or manager after completion of the service. Parts that are required to be returned to the manufacturer due to warranty are exempt.

6.4 Restricted Service

Any system requiring a hydrostatic test, will not be serviced until such system has been subjected to, and passed, the required test. A non-compliance tag will not be accepted to meet the requirements of this section.

6.5 Service

At the time of installation, and during any service, all servicing will be done in accordance with the manufacturers instructions, adopted statutes, and these rules. Systems will be placed and remain in an operable condition, free from defects which may cause malfunctions. Discharge nozzles and piping will be free of obstructions or substances.

R710-7-7. Adjudicative Proceedings.

7.1 All adjudicative proceedings performed by the agency shall proceed informally as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

7.2 The issuance, renewal, or continued validity of a license or certificate of registration may be denied, suspended, or revoked, if the SFM finds that the applicant, person employed for, or the person having authority and management of a concern servicing automatic fire suppression systems commits any of the following violations:

(a) The person or applicant is not the real person in interest.

(b) Material misrepresentation or false statement on the application.

(c) Refusal to allow inspection by the SFM, his duly authorized deputies.

(d) The person or applicant for a license or certificate of registration does not have the proper facilities and equipment, to conduct the operations for which application is made.

(e) The person or applicant for a certificate of registration does not possess the qualifications of skill or competence to conduct the operations for which application was made, as evidenced by failure to pass the examination and practical tests pursuant to Section 4.2 of these rules.

(f) The person or applicant has been convicted of any of the following:

(i) a violation of the provisions of these rules;

(ii) a crime of violence or theft; or

(iii) any crime that bears upon the person or applicant's ability to perform their functions and duties.

(g) The person servicing automatic fire suppression systems does not maintain adequate facilities, equipment, or knowledge, to conduct operations as required in the manufacturer's instructions, statute, and rules.

(h) The person or applicant is involved in conduct which could be considered criminal, although such conduct did not result in the filing of criminal charges against the person, but where the evidence shows that the criminal act did occur, that the person committed the act, and that the burden by a preponderance of evidence could be established.

7.3 A person whose license or certificate of registration is suspended or revoked by the SFM shall have an opportunity for a hearing before the Board if requested by that person within 20 days after receiving notice.

7.4 All adjudicative proceedings, other than criminal prosecution, taken by the SFM to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

7.5 The Board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The Board shall be the final authority on the suspension or revocation of a license or certificate of registration.

7.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

7.7 Reconsideration of the Board decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

7.8 After a period of three years from the date of revocation, the Board shall review the submitted written application of a person whose license or certificate of registration has been revoked. After timely notice to all parties involved, the Board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the Board. After the hearing, the Board shall direct the SFM to allow the person to complete the licensing or certification process or shall direct that the revocation be continued.

7.9 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

R710-7-9. Fees.

9.0 Fee Schedule

(a) Licenses (New and Renewals)

(1) Type H1 (Marketing and Installation) . . . $200.00

If the concern currently is licensed to service portable fire extinguishers the fee is $100.00.

(2) Type H2 (Service Only) $100.00

If the concern currently is licensed to service portable fire extinguishers the fee is $50.00.

(3) Branch Office License $100.00

(b) Certificates of Registration (New and Renewals)

(1) Certificate of Registration $30.00

If the individual currently is certified as a portable fire extinguisher technician the fee is $10.00

(c) License Transfer $50.00

(d) Examinations

(1) Initial Examination $20.00

(2) Re-Examination $15.00

(3) Five (5) Year Examination $20.00

9.1 Payment of Fees

The required fee will accompany the application for license or certificate of registration. License or certificate of registration fees will be refunded if the application is denied.

9.2 Late Renewal Fees

(a) Any license or certificate of registration not renewed before January 1 will be subject to an additional fee equal to 10% of the required inspection fee.

(b) When a certificate of registration has expired for more than one year, an application will be made for an original certificate as if the application was being made for the first time. Examinations will be re-taken with initial fees.

KEY: fire prevention, systems
January 15, 1998 53-7-204
Notice of Continuation June 19, 1997

R710. Public Safety, Fire Marshal.
R710-9. Rules Pursuant to the Utah Fire Prevention Law.
R710-9-1. Title and Authority.

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.

R710-9-2. Definitions.

"Academy" means Utah Fire and Rescue Academy.

"Board" means Utah Fire Prevention Board.

"Council" means Fire Service Standards and Training Council.

"Director" means the Director of the Utah Fire and Rescue Academy.

"Division" means State Fire Marshal.

"Facilitator" means Fire Academy Curriculum Facilitator.

"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.

"LFA" means Local Fire Authority

"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.

"SFM" means State Fire Marshal.

"UCA" means Utah Code Annotated, 1953.

"UFC" means Uniform Fire Code.

"UFCS" means Uniform Fire Code Standards.

R710-9-3. Specific Editions of the Fire Code and Standards.

3.1 The Uniform Fire Code (UFC), Volume 1, 1997 edition, excluding appendices, as promulgated by the International Fire Code Institute, is hereby adopted and incorporated by reference as the state fire code, for the safeguarding of life and property from the hazards of fire and explosion.

3.2 The Uniform Fire Code Standards (UFCS), Volume 2, 1997 edition, as promulgated by the International Fire Code Institute, is hereby adopted and incorporated by reference, as a set of standards that are specifically referred to within various sections of the UFC. The following Uniform Fire Code Standards are amended as follows:

a. Uniform Fire Code Standard 10-1, Selection, Installation, Inspection, Maintenance and Testing of Portable Fire Extinguishers is amended to adopt NFPA, Standard 10, 1994 edition.

b. Uniform Fire Code Standard 10-2, Installation, Maintenance and Use of Fire Protection Signaling Systems is amended to adopt NFPA, Standard 72, 1996 edition.

c. Uniform Fire Code Standard 52-1, Compressed Natural Gas (CNG) Vehicular Fuel Systems is amended to adopt NFPA, Standard 52, 1995 edition.

d. Uniform Fire Code Standard 79-1, Foam Fire-Protection Systems is amended to adopt NFPA, Standard 11, 1994 edition.

e. Uniform Fire Code Standard 82-1, Liquefied Petroleum Gas Storage and Use is amended to adopt NFPA, Standard 58, 1995 edition.

R710-9-4. Conduct of Board Meetings.

4.1 Board meetings shall be presided over and conducted by the chairman and in his absence the vice chairman or the chairman's designee.

4.2 A quorum shall be required to approve any action of the Board.

4.3 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.

4.4 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.

4.5 Public notice of Board meetings shall be made by the Division as prescribed in UCA Section 52-4-6.

4.6 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.

4.7 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.

R710-9-5. Procedures to Amend the Uniform Fire Code.

5.1 All requests for amendments which would be less restrictive than the adopted edition of the UFC, shall be submitted to the division to be presented to the Board.

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 meeting of the Board.

5.3 Upon presentation of a proposed amendment, the Board may:

a. make a recommendation to accept the proposed amendment as submitted or as modified by the Board;

b. make a recommendation to reject adoption of the proposed amendment;

c. make a recommendation to submit the proposed amendment to an ad hoc committee or formal organization for further study; or

d. make a recommendation that the proposed amendment be returned to the requesting agency, accompanied by Board comments, for the purpose of reconsidering and resubmitting the proposed amendment with modification.

5.4 The ad hoc committee or organization assigned a proposed amendment shall report its recommendation to the Board within forty-five (45) days after the proposed amendment is submitted to that committee or organization.

5.5 The Board shall make a final decision on the proposed amendment at the next Board meeting.

5.5 The Board may reconsider any request for amendment, or reverse or modify any previous action by majority vote.

R710-9-6. Amendments and Additions.

6.1 The following amendments and additions are hereby adopted for those occupancies and buildings under the jurisdiction of the Board:

6.2 Door Closures

UFC, Section 1111.2.2 Operation. Add the following Exception: In Group E Occupancies, Divisions 1 and 2, door closures may be of the friction hold-open type on classroom doors only .

6.3 Fireworks

UFC, Section 7802.1 is amended to include the following Exception: 4. The use of fireworks for display and retail sales is allowed as set forth in the "Utah Fireworks Act", as adopted in Title 11, Chapter 3, UCA.

R710-9-7. Publications of Amendments to the Uniform Fire Code.

7.1 The division shall publish a list of amendments to the UFC, that have been granted by the Board.

7.2 The division shall make available to any person or agency copies of these amendments upon request, and may

charge a reasonable fee for multiple requests from a person or agency in accordance with the provisions of UCA, Section 63-2.

R710-9-8. Local Ordinances.

8.1 The legislative body of a political subdivision shall provide to the Board within forty-five (45) days after passage, a copy of any ordinances enacted that are more restrictive than the adopted fire code.

8.2 The division shall maintain an indexed copy of these ordinances for the Board.

8.3 The division shall publish an indexed list of these ordinances that have been made by political subdivisions.

8.4 The division shall make available to any person or agency copies of these ordinances upon request, and may charge a reasonable fee for multiple requests from a person or agency.

R710-9-9. Enforcement of the Rules of the State Fire Marshal.

9.1 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.

9.2 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.

9.3 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.

9.4 The following listed occupancies shall be inspected by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall inspect.

(a) Publicly owned buildings other than state owned buildings as referenced in 9.1 of this rule.

(b) Public and private schools.

(c) Privately owned colleges and universities.

(d) Institutional occupancies as defined in Section 9-2 of this rule.

(e) Places of assembly as defined in Section 9-2 of this rule.

R710-9-10. Utah Fire and Rescue Academy, Fire Service Standards and Training Council, and Fire Academy Curriculum Facilitator.

10.1 The fire service training school shall be known as the Utah Fire and Rescue Academy.

10.2 There is created the Fire Service Standards and Training Council whose members shall be appointed by the Board for three year terms.

10.3 This Council shall serve in an advisory position to the Board on matters relating to fire service standards, training, and certification, and shall consist of the following members:

(a) a member of the Utah State Fire Chiefs Association.

(b) a member of the Utah State Firemen's Association.

(c) a member of the Utah Fire Marshal's Association.

(d) a specialist in hazardous materials representing the Hazardous Materials Institute.

(e) a fire/arson investigator representing the Utah Chapter of the International Association of Arson Investigators.

(f) a specialist in wildland fire suppression and prevention from the Utah Division of Sovereign Lands and Forestry.

(g) a representative from the International Association of Firefighters.

(h) a representative from the Utah Fire and Rescue Academy, Certification Council.

(i) a representative from the fire service that sits on the Utah State Emergency Medical Services Committee.

(j) a training officer.

10.4 The Council shall select one of its members to act in the position of chairman, and another member to act as vice chairman.

10.5 The majority of the Council shall be present to constitute a quorum.

10.6 The Fire Academy Curriculum Facilitator, in cooperation with the Director of the Utah Fire and Rescue Academy shall report to the Board activities of the Academy, to include certification, development of programs, facilities, instruction for firefighters, and budgetary matters.

10.7 The Facilitator, in cooperation with the Director shall recommend to the Council new or expanded standards regarding education and training for the fire service.

10.8 The Facilitator, in cooperation with the Director shall recommend to the Council minimum certification standards required for firefighter, apparatus driver/pump operator, fire officer, instructor, inspector, investigator and hazardous materials responder.

10.9 The Council shall consider all subjects presented to them, and any other subjects assigned to them by the Board, and shall report their recommendations to the Board.

R710-9-11. Deputizing Persons to Act as Special Deputy State Fire Marshals.

11.1 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.

11.2 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 occupancies listed in the Fire Prevention Law.

11.3 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.

11.4 Special deputy state fire marshals shall be appointed by completing an oath and shall be appointed for a specific period of time.

11.5 Special deputy state fire marshals shall have a picture identification card and shall carry that card when performing their assigned duties.

R710-9-12. 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.

R710-9-13. 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.

R710-9-14. Adjudicative Proceedings.

14.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

14.2 If a city, county, or fire protection district refuses to establish a method of appeal regarding a portion of the UFC, the appealing party may petition the Board to act as the board of appeals.

14.3 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.

14.4 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 63-46b-3.

14.5 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

14.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

14.7 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

14.8 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

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January 15, 1998 **53-7-204**
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R746. Public Service Commission, Administration.
R746-356. Intrastate (IntraLATA) Equal Access To Toll Calling Services By Telecommunications Carriers.
R746-356-1. Purpose and Authority.

A. Purpose --

1. These rules establish procedures and methods by which all Commission certified local exchange carrier telecommunications corporations (LECs) will provide and maintain equal access, and customer dialing parity, to intrastate (intraLATA) toll services when requested by one or more Commission or Federal Communications Commission (FCC) certified telecommunications corporations or common carriers.

2. The costs of the equal access implementation and continuing service shall be fairly and reasonably distributed based on the future toll service market share achieved by the LEC and all certified telecommunications carriers requesting equal access service.

3. The provisioning of interLATA interstate toll services by a subsidiary, or an affiliate, of a LEC will be considered to be the same as those services being provided by the LEC itself for implementation of intrastate equal access.

B. Authority --

1. Section 54-8b-2.2(3) requires that the Commission establish these rules.

2. Title 47 U.S.C. Section 271(e)(2)requires implementation of intraLATA equal access for Bell Operating Company interLATA service offerings.

3. Title 47 U.S.C. Section 251 (b)(3), requires all LECs to provide intraLATA equal access when requested by a commission or FCC certified telecommunications corporation or common carrier, or when the LEC commences providing in-region or interstate interLATA toll service to its customers, with some exceptions as defined in 47 U.S.C. Section 251(f)(2).

R746-356-2. Definitions.

For purposes of these rules, the following terms shall bear the associated meanings. All other terms are as defined in Section 54-8b

A. "Bona Fide Request" -- A written request submitted by a telecommunications corporation or common carrier certified by the Commission or the FCC for intraLATA or intraLATA equal access service in an exchange or exchanges of a LEC.

B. "Equal Access" -- Dialing arrangements and other service characteristics provided by a LEC to other carriers that are equivalent in type and quality to that provided by the LEC, or designated contract carrier, for its provision of intraLATA toll service.

C. "Presubscription" -- A process that allows customers to preselect the carrier that has equal access services for providing toll calls through the use of 1+ or 0+ without dialing a multi-digit access code.

D. "Presubscribed Interexchange Carrier"(PIC) -- The certified telecommunications carrier a customer selects to provide 1+ or 0+ toll service, without the use of access codes, following equal access presubscription implementation.

E. "2-PIC" -- The equal access presubscription option that affords customers the opportunity to select one certified telecommunications carrier for all interLATA 1+ or O+ toll calls and, at the customer's option, to select another certified telecommunications carrier for all intraLATA 1+ or O+ toll calls.

R746-356-3. Equal Access Implementation.

A. Implementation -- LECs shall proceed to implement intraLATA equal access, using the 2-PIC method, in accordance with the following criteria:

1. US West Communications and all LECs that now provide, through the LEC, subsidiary or affiliate company, interLATA toll services to Utah customers, and which provide interLATA equal access to any telecommunications carrier, including a LEC subsidiary or affiliate, shall file an equal access implementation plan with the Commission within 30 days after the effective date of these rules.

a. The plan shall include a cutover target date(s) that is no later than: seven months after the effective date of these rules, or in the case of US West Communications, the date on which US West implements in-region interLATA services by the authority of the FCC, whichever date is earlier.

b. Telecommunications carriers requiring intraLATA equal access from a LEC must file a bona fide request with the LEC within 30 days after receiving the implementation plan, with copies of the request being mailed to the Commission, the Division, and the CCS.

c. If no bona fide requests are received for equal access at one or more exchanges, the implementation plan and target date for these exchanges can, upon Commission approval, be deferred to a future date.

2. A LEC that does not meet the criteria of R746-356-3(A)(1), will respond to a bona fide request, or on its own initiative, by filing an implementation plan with the Commission within 30 days.

a. The target date for implementation shall be no later than seven months from the date of receipt of the bona fide request.

b. Copies of the plan shall be mailed to the requesting telecommunications carrier, all other carriers subscribing to the LEC's interLATA equal access service, the Commission, and the Division.

3. A LEC can request a temporary waiver of the requirement to implement intraLATA equal access for one or more of its exchange areas, when it can prove that it does not have the technical or economic abilities to provide intraLATA equal access service.

a. The Commission, after notice and opportunity for hearing, may grant a waiver upon a showing of a lack of technical or economic ability.

b. When a LEC receives a waiver it shall implement interLATA and IntraLATA equal access, no later than December 31, 2001, unless a later date has been established in the Commission waiver.

B. Approval of Equal Access Plans -- The Commission will assign each LEC equal access plan a docket number and issue a notice of the proceeding to all parties on its telecommunications list.

1. The Commission shall approve each plan within 45 days of the filed date, unless hearings are required to approve the implementation plan.

2. The plan target date(s) will be automatically extended by the number of days in excess of 45 required to finally

approve a plan.

C. Exemption of Toll Services -- A LEC shall continue to provide retail toll services as a carrier of last resort for its own certified territory, or as a PIC for its own certified territory, until an order of exemption is issued by the Commission.

D. Continued Services -- LECs will continue to provide services for customer dialed number protocols 0-, Nll, 411,611, 911, and 976. These numbers are not equal access and call routing will continue to be processed unchanged by the LEC following the implementation of intraLATA equal access. Calls using customer dialed protocols, such as 500, 700, 800, 900, 10356, and 101356X, are not subject to presubscription and they will continue to be routed to the appropriate non-equal access carrier.

E. Routing Interface Signaling -- All carriers shall establish uniform end-to-end message routing interface signaling that includes at least the carrier identification code (CIC), originating line or trunk telephone number, and terminating line or trunk telephone number. This requirement is to permit direct billing to the responsible carrier(s) for use of the switched access network elements provided by other carriers.

R746-356-4. Equal Access Implementation Plans.

A. Criteria -- An intraLATA equal access implementation plan filed with the Commission, with a copy to the Division, shall include at least the following:

1. the planned individual central office or exchange cutover dates;

2. a schedule of any planned hardware and software upgrades required;

3. estimated investments and expenses for the planned upgrades;

4. estimated internal training expenses;

5. estimated cutover expenses;

6. estimated administrative expenses for preparing and filing tariffs;

7. estimated order processing expenses;

8. estimated customer notification and education expenses;

9. the computations of its estimated proposed equal access recovery charges; and

10. a copy of the work papers used to calculate the information required by R746-356-4(A)(3) through (9).

B. Service of Plans -- Copies of the plan shall be served on the Division of Public Utilities (Division), Committee of Consumer Services (CCS), and all telecommunications carriers that then subscribe to interLATA equal access from the LEC.

C. Status Reports -- In the Commission approval of a plan, the Commission shall establish the LEC's reporting requirements for reporting implementation progress, with a final report filed after implementation.

R746-356-5. Customer Education, Notification, and Presubscription Contact Procedure.

A. Customer Information -- Equal access customer instructional materials, forms, and notification letters developed by a LEC, shall be competitively neutral and unbiased as to the presubscription process. They shall clearly state the available PICs and a toll free contact number for each PIC. The proposed text of the first mailing letter shall be filed with the Commission and the Division at least 60 days prior to equal access implementation.

B. Customer Notification -- Customer notification of the initial availability of intraLATA equal access will be provided as follows:

1. For exchanges in which interLATA equal access balloting is required, the ballot information shall be expanded to provide customer instructions that will allow the customer to presubscribe to both an interLATA and an intraLATA PIC, including the LEC.

2. For exchanges in which interLATA equal access has previously been provided, the balloting procedure will not be required. The LEC will provide notification of the intraLATA equal access implementation, and request that the customers preselect their PIC by letter required by R746-356-5(A). The letter will be sent to all LEC customers by 1st Class Mail no earlier than 45 days and no later than 15 days prior to the scheduled implementation date for each exchange.

3. Customers applying for local exchange service after the initial equal access notification mailing(s), but before implementation of equal access, shall receive a copy of the notification letter from the LEC.

4. Each PIC will be responsible for providing the LEC(s) with a current toll free number(s) to be included in the initial customer equal access notification letter.

5. The LEC will not be required to modify the customer notification letter seven days prior to the first mailing for the purpose of including another PIC that did not file a bona fide request in time for the letter preparation.

C. Subsequent Customer Notification -- Subsequent to the equal access implementation of each exchange. The following procedures shall apply to all customer contacts and requests:

1. Customers applying for new local exchange service from the LEC shall be informed of the presubscription process and their choice of available PICs from a list that is referred to by the service representative in a rotational or random manner. This list must be constructed so that a LEC, and any of its subsidiaries, or affiliates, are not listed more than once, nor mentioned or written adjacent to one another. When a LEC and its subsidiary, or affiliate, have very similar names, the customer must be specifically advised as to the relationship between the entities.

2. Each new customer shall be required to select both an interLATA PIC and an intraLATA PIC. A customer who does not select a PIC(s) shall be informed that they will not be presubscribed to any toll provider, and will be required to utilize access codes when placing toll calls, until that customer selects a PIC.

3. When a customer requests more information about a specific PIC, other than the LEC, the LEC representative shall refer the caller to the PIC.

4. When a customer requests or advises the LEC representative of an address change, with or without a number change, the LEC shall assume that the existing PICs will not change for the new address, unless the customer voluntarily directs the LEC to do otherwise.

5. When a customer reports trouble in placing intraLATA toll calls, the LEC representative shall first determine whether the customer is presubscribed to a PIC. If so, the report will be

handled as a service complaint pursuant to the procedure in effect between the LEC and the PIC. If the customer is not presubscribed, the customer will be asked to select a PIC in the manner of a new customer, per R746-356-5(C)(1).

6. LEC representatives may market their company's intraLATA service when handling "general service" calls with customers. A general service call is a call to the LEC requesting general information about the LEC's services, the establishment or removal of the LEC's services, billing inquiries, or calls relating to any other aspect of the services then provided to the customer by the LEC. General service calls do not include calls requesting a specific PIC change, address change, or telephone number change from existing customers.

R746-356-6. Presubscription Selection Procedures.

A. Initial and Subsequent Orders -- The initial and subsequent orders for presubscribed PIC selections of customers shall be placed with a LEC by the customers or carriers, and confirmed pursuant to any FCC requirements and R746-349-3, Filing Requirements.

B. Multiple PIC Change Orders -- When a LEC receives multiple PIC change orders for the same customer, the LEC shall process and implement the PIC change order with the latest date.

C. Authorized Selections -- PIC presubscription selections shall only be authorized and valid when made by the "account holder" as defined in R746-240-2(A).

D. Payphone and Shared Tenent Services -- IntraLATA PIC presubscription shall be available to public and semi-public pay phone services and to Shared Tenant Services (STS). When the LEC receives differing PIC selection directions from a pay phone service or a STS provider and a premises owner, or a legally authorized representative of the premises owner, the LEC will assign the PIC selection of the owner.

E. Automatic PIC Assignment -- During the initial intraLATA equal access implementation of each exchange or central office, the existing customers that do not provide a PIC selection to the LEC, or to an equal access requesting carrier, will automatically receive the equal access PIC of the LEC serving the customer.

R746-356-7. Presubscription Charges.

A. Single PIC Selection Charge -- The LEC will establish an intraLATA equal access presubscription charge for new service PIC selections, or PIC selection changes. This charge will initially be the same as the LEC's interLATA charge. This charge will be subject to change and approval of the Commission. This intraLATA charge will apply when the customer is establishing or changing only the intraLATA PIC presubscription.

B. Multiple PIC Selection Charge -- The LEC will establish another intraLATA equal access presubscription charge that will apply when a customer orders the simultaneous installation or change of presubscription of both the intraLATA and interLATA PICs. Initially, the IntraLATA PIC charge applied when there is an order for both intraLATA and InterLATA PICs will be one-half of the intraLATA PIC charge pursuant to R746-356-7(A). This charge will be subject to change and approval of the Commission.

C. Waiver --

1. During the initial equal access implementation for each exchange, the intraLATA presubscription charge shall not be imposed on the customers for their initial PIC selection.

2. Customers will be allowed to make one intraLATA PIC selection change within a four month period following implementation date of each exchange or central office without being billed the intraLATA presubscription PIC charge.

3. The PIC charge shall be imposed for any subsequent intraLATA PIC changes, or after the four-month period ,whichever occurs first.

4. If customers change their interLATA PIC at the same time they initially select an intraLATA PIC, the customer shall be billed only the interLATA PIC change charge.

D. New Customer Waiver -- New customers receiving service from a LEC, who do not initially select a presubscribed intraLATA PIC, may select a presubscribed interLATA during the first four-months of service without incurring the intraLATA PIC charge.

R746-356-8. Equal Access Implementation Cost Recovery Procedure.

A. Recovery of Waived PIC Charges -- The LEC shall bill each equal access telecommunications carrier for the presubscription PIC charges waived by R746-356-7(C) or (D).

B. Recovery of Expenses -- Any recovery of recurring and one-time expenses incurred for the provision of intraLATA equal access shall be through a separate, temporary equal access recovery charge (EARC) element in a LEC's switched access and toll tariffs. These expenses may include:

1. the incremental additional expenses related directly to the provision of hardware and software investments not required to upgrade the switching capabilities of each central office absent the provision of the intraLATA equal access;

2. expenses for the incremental additional training of customer contact personnel in the additional processing of intraLATA presubscription requests;

3. expenses related directly to the preparation, reproduction and mailing of the customer educational materials and equal access notifications;

4. expenses related directly to the preparation, reproduction and filings of the intraLATA equal access tariffs;

5. expenses for the Utah portion of the incremental additional software programming of the billing programs that would not be required absent the Utah intraLATA equal access; and

6. expenses for the Utah portion of the incremental additional software programming of the business office support systems that would not be required absent the Utah intraLATA equal access.

C. Recovery Timing -- Expenses for intraLATA equal access implementation developed from items shown in R746-356-8(B)shall be subject to approval by the Commission. The EARC shall be assessed to estimated monthly intraLATA originating switched access minutes and monthly originating LEC toll minutes of use, over a three-year period for US West, and over a two-year period for all other LECs.

D. True-Up --

1. For each applicable year, the EARC will be trued-up

and changed based on the actual incurred expenses, the actual originating intraLATA switched access minutes billed to each PIC, and the intraLATA toll minutes billed by the LEC.

2. The true-ups shall result in an annual payment by the LEC to each participating equal access carrier for excess payments, or an annual bill from the LEC to each participating equal access carrier for any under-payments.

3. The true-ups should result in an annual inter-company payment process based on the proportional intraLATA switched access minutes previously billed to each carrier and the intraLATA toll minutes billed by the LEC.

4. The LEC and an equal access carrier may agree to alternative compensation arrangements in lieu of an annual payment.

KEY: communications, equal access*, telecommunications, toll calling*
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R884. Tax Commission, Property Tax.
R884-24P. Property Tax.
R884-24P-5. Abatement or Deferral of Property Taxes of Indigent Persons Pursuant to Utah Code Ann. Sections 59-2-1107 through 59-2-1109 and 59-2-1202(5).

A. "Household income" includes net rents, interest, retirement income, welfare, social security, and all other sources of cash income.

B. Absence from the residence due to vacation, confinement to hospital, or other similar temporary situation shall not be deducted from the ten-month residency requirement of Section 59-2-1109(3)(a)(ii).

C. Written notification shall be given to any applicant whose application for abatement or deferral is denied.

R884-24P-7. Assessment of Mining Properties Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Allowable costs" means those costs reasonably and necessarily incurred to own and operate a productive mining property and bring the minerals or finished product to the customary or implied point of sale.

a) Allowable costs include: salaries and wages, payroll taxes, employee benefits, workers compensation insurance, parts and supplies, maintenance and repairs, equipment rental, tools, power, fuels, utilities, water, freight, engineering, drilling, sampling and assaying, accounting and legal, management, insurance, taxes (including severance, property, sales/use, and federal and state income taxes), exempt royalties, waste disposal, actual or accrued environmental cleanup, reclamation and remediation, changes in working capital (other than those caused by increases or decreases in product inventory or other nontaxable items), and other miscellaneous costs.

b) For purposes of the discounted cash flow method, allowable costs shall include expected future capital expenditures in addition to those items outlined in A.1.a).

c) For purposes of the capitalized net revenue method, allowable costs shall include straight-line depreciation of capital expenditures in addition to those items outlined in A.1.a).

d) Allowable costs does not include interest, depletion, depreciation other than allowed in A.1.c), amortization, corporate overhead other than allowed in A.1.a), or any expenses not related to the ownership or operation of the mining property being valued.

e) To determine applicable federal and state income taxes, straight line depreciation, cost depletion, and amortization shall be used.

2. "Capital expenditure" means the cost of acquiring property, plant, and equipment used in the productive mining property operation and includes:

a) purchase price of an asset and its components;

b) transportation costs;

c) installation charges and construction costs; and

d) sales tax.

3. "Constant or real dollar basis" means cash flows or net revenues used in the discounted cash flow or capitalized net revenue methods, respectively, prepared on a basis where inflation or deflation are adjusted back to the lien date. For this purpose, inflation or deflation shall be determined using the gross domestic product deflator produced by the Congressional Budget Office, or long-term inflation forecasts produced by reputable analysts, other similar sources, or any combination thereof.

4. "Discount rate" means the rate that reflects the current yield requirements of investors purchasing comparable properties in the mining industry, taking into account the industry's current and projected market, financial, and economic conditions.

5. "Economic production" means the ability of the mining property to profitably produce and sell product, even if that ability is not being utilized.

6. "Exempt royalties" means royalties paid to this state or its political subdivisions, an agency of the federal government, or an Indian tribe.

7. "Expected annual production" means the economic production from a mine for each future year as estimated by an analysis of the life-of-mine mining plan for the property.

8. "Fair market value" is as defined in Section 59-2-102.

9. "Federal and state income taxes" mean regular taxes based on income computed using the marginal federal and state income tax rates for each applicable year.

10. "Implied point of sale" means the point where the minerals or finished product change hands in the normal course of business.

11. "Net cash flow" for the discounted cash flow method means, for each future year, the expected product price multiplied by the expected annual production that is anticipated to be sold or self-consumed, plus related revenue cash flows, minus allowable costs.

12. "Net revenue" for the capitalized net revenue method means, for any of the immediately preceding five years, the actual receipts from the sale of minerals (or if self - consumed, the value of the self-consumed minerals), plus actual related revenue cash flows, minus allowable costs.

13. "Non-operating mining property" means a mine that has not produced in the previous calendar year and is not currently capable of economic production, or land held under a mineral lease not reasonably necessary in the actual mining and extraction process in the current mine plan.

14. "Productive mining property" means the property of a mine that is either actively producing or currently capable of having economic production. Productive mining property includes all taxable interests in real property, improvements and tangible personal property upon or appurtenant to a mine that are used for that mine in exploration, development, engineering, mining, crushing or concentrating, processing, smelting, refining, reducing, leaching, roasting, other processes used in the separation or extraction of the product from the ore or minerals and the processing thereof, loading for shipment, marketing and sales, environmental clean-up, reclamation and remediation, general and administrative operations, or transporting the finished product or minerals to the customary point of sale or to the implied point of sale in the case of self-consumed minerals.

15. "Product price" for each mineral means the price that is most representative of the price expected to be received for the mineral in future periods.

a) Product price is determined using one or more of the

following approaches:

(1) an analysis of average actual sales prices per unit of production for the minerals sold by the taxpayer for up to five years preceding the lien date; or,

(2) an analysis of the average posted prices for the minerals, if valid posted prices exist, for up to five calendar years preceding the lien date; or,

(3) the average annual forecast prices for each of up to five years succeeding the lien date for the minerals sold by the taxpayer and one average forecast price for all years thereafter for those same minerals, obtained from reputable forecasters, mutually agreed upon between the Property Tax Division and the taxpayer.

b) If self-consumed, the product price will be determined by one of the following two methods:

(1) Representative unit sales price of like minerals. The representative unit sales price is determined from:

(a) actual sales of like mineral by the taxpayer;

(b) actual sales of like mineral by other taxpayers; or

(c) posted prices of like mineral; or

(2) If a representative unit sales price of like minerals is unavailable, an imputed product price for the self-consumed minerals may be developed by dividing the total allowable costs by one minus the taxpayer's discount rate to adjust to a cost that includes profit, and dividing the resulting figure by the number of units mined.

16. "Related revenue cash flows" mean non-product related cash flows related to the ownership or operation of the mining property being valued. Examples of related revenue cash flows include royalties and proceeds from the sale of mining equipment.

17. "Self consumed minerals" means the minerals produced from the mining property that the mining entity consumes or utilizes for the manufacture or construction of other goods and services.

18. "Straight line depreciation" means depreciation computed using the straight line method applicable in calculating the regular federal tax. For this purpose, the applicable recovery period shall be seven years for depreciable tangible personal mining property and depreciable tangible personal property appurtenant to a mine, and 39 years for depreciable real mining property and depreciable real property appurtenant to a mine.

B. Valuation.

1. The discounted cash flow method is the preferred method of valuing productive mining properties. Under this method the taxable value of the mine shall be determined by:

a) discounting the future net cash flows for the remaining life of the mine to their present value as of the lien date; and

b) subtracting from that present value the fair market value, as of the lien date, of licensed vehicles and nontaxable items.

2. The mining company shall provide to the Property Tax Division an estimate of future cash flows for the remaining life of the mine. These future cash flows shall be prepared on a constant or real dollar basis and shall be based on factors including the life-of-mine mining plan for proven and probable reserves, existing plant in place, capital projects underway, capital projects approved by the mining company board of directors, and capital necessary for sustaining operations. All factors included in the future cash flows, or which should be included in the future cash flows, shall be subject to verification and review for reasonableness by the Property Tax Division.

3. If the taxpayer does not furnish the information necessary to determine a value using the discounted cash flow method, the Property Tax Division may use the capitalized net revenue method. This method is outlined as follows:

a) Determine annual net revenue, both net losses and net gains, from the productive mining property for each of the immediate past five years, or years in operation, if less than five years. Each year's net revenue shall be adjusted to a constant or real dollar basis.

b) Determine the average annual net revenue by summing the values obtained in B.3.a) and dividing by the number of operative years, five or less.

c) Divide the average annual net revenue by the discount rate to determine the fair market value of the entire productive mining property.

d) Subtract from the fair market value of the entire productive mining property the fair market value, as of the lien date, of licensed vehicles and nontaxable items, to determine the taxable value of the productive mining property.

4. The discount rate shall be determined by the Property Tax Division.

a) The discount rate shall be determined using the weighted average cost of capital method, a survey of reputable mining industry analysts, any other accepted methodology, or any combination thereof.

b) If using the weighted average cost of capital method, the Property Tax Division shall include an after-tax cost of debt and of equity. The cost of debt will consider market yields. The cost of equity shall be determined by the capital asset pricing model, arbitrage pricing model, risk premium model, discounted cash flow model, a survey of reputable mining industry analysts, any other accepted methodology, or a combination thereof.

5. Where the discount rate is derived through the use of publicly available information of other companies, the Property Tax Division shall select companies that are comparable to the productive mining property. In making this selection and in determining the discount rate, the Property Tax Division shall consider criteria that includes size, profitability, risk, diversification, or growth opportunities.

6. A non-operating mine will be valued at fair market value consistent with other taxable property.

7. If, in the opinion of the Property Tax Division, these methods are not reasonable to determine the fair market value, the Property Tax Division may use other valuation methods to estimate the fair market value of a mining property.

8. The fair market value of a productive mining property may not be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property. The mine value shall include all equipment, improvements and real estate upon or appurtenant to the mine. All other tangible property not appurtenant to the mining property will be separately valued at fair market value.

9. Where the fair market value of assets upon or appurtenant to the mining property is determined under the cost method, the Property Tax Division shall use the replacement

cost new less depreciation approach. This approach shall consider the cost to acquire or build an asset with like utility at current prices using modern design and materials, adjusted for loss in value due to physical deterioration or obsolescence for technical, functional and economic factors.

C. The fair market value of productive mining property located in more than one tax area, less the value of the machinery and equipment, improvements, and land surface rights, will be apportioned to the tax areas based on the relative investment in machinery and equipment, improvements, and land in each location. The value of the machinery and equipment, improvements, and land will be apportioned to the districts where they are located.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1998.

R884-24P-8. Security for Property Tax on Uranium and Vanadium Mines Pursuant to Utah Code Ann. Section 59-2-211.

A. The security deposit allowed by Section 59-2-211 shall be requested from the mine owners or operators by giving notice in the manner required by Section 59-2-211. A list of mine owners and operators who have made lump sum security deposits with the Tax Commission will be furnished annually by the Tax Commission to any person, mill, buying station, or other legal entity receiving uranium or vanadium ore mined, produced, or received from within Utah.

B. At the option of the mine owner or operator, within 30 days after receiving proper notice from the Tax Commission, or if the mine owner or operator has not complied with the request within the 30 day period, the Tax Commission may implement the following procedure:

1. Any person, mill, buying station, or other legal entity receiving uranium or vanadium ore mined, produced, or received from within Utah shall withhold 4 percent, or any higher amount set by the Tax Commission, of the gross proceeds due to the mine operator or owner.

2. All amounts withheld shall be remitted to the Tax Commission by the last day of April, July, October, and January for the immediately preceding calendar quarter, in the manner set forth by the Tax Commission.

3. Not later than the last day of February, owners or operators of uranium and vanadium mines who have not made lump sum security deposits with the Tax Commission shall be provided with a statement from the Tax Commission showing all security deposit amounts withheld from their gross proceeds during the previous calendar year.

4. The Tax Commission shall provide the county treasurers with a list of all uranium and vanadium mine owners and operators who have had security deposit amounts withheld. The county treasurers shall then advise the Tax Commission in writing of the amount of taxes due from each mine owner or operator on the Tax Commission's list.

5. Once all county treasurers have responded, the Tax Commission shall forward to each county treasurer the taxes due, or the pro rata portion thereof, to the extent taxes have been withheld and remitted to the Tax Commission.

a. Any amount withheld in excess of the total taxes due to all counties shall be refunded to the appropriate mine owner or operator by the Tax Commission.

b. If the amount withheld is not sufficient to pay the full amount of taxes due, the county treasurers shall collect the balance of taxes directly from the mine owner or operator.

R884-24P-10. Taxation of Underground Rights in Land That Contains Deposits of Oil or Gas Pursuant to Utah Code Ann. Sections 59-2-201 and 59-2-210.

A. Definitions.

1. "Person" is as defined in Section 68-3-12.

2. "Working interest owner" means the owner of an interest in oil, gas, or other hydrocarbon substances burdened with a share of the expenses of developing and operating the property.

3. "Unit operator" means a person who operates all producing wells in a unit.

4. "Independent operator" means a person operating an oil or gas producing property not in a unit.

5. One person can, at the same time, be a unit operator, a working interest owner, and an independent operator and must comply with all requirements of this rule based upon the person's status in the respective situations.

6. "Expected annual production" means the future economic production of an oil and gas property as estimated by the Property Tax Division using decline curve analysis. Expected annual production does not include production used on the same well, lease, or unit for the purpose of repressuring or pressure maintenance.

7. "Product price" means:

a) Oil: The weighted average posted price for the calendar year preceding January 1, specific for the field in which the well is operating as designated by the Division of Oil, Gas, and Mining. The weighted average posted price is determined by weighing each individual posted price based on the number of days it was posted during the year, adjusting for gravity, transportation, escalation, or deescalation.

b) Gas:

(1) If sold under contract, the price shall be the stated price as of January 1, adjusted for escalation and deescalation.

(2) If sold on the spot market or to a direct end-user, the price shall be the average price received for the 12-month period immediately preceding January 1, adjusted for escalation and deescalation.

8. "Future net revenue" means annual revenues less costs of the working interests and royalty interest.

9. "Revenue" means expected annual gross revenue, calculated by multiplying the product price by expected annual production for the remaining economic life of the property.

10. "Costs" means expected annual allowable costs applied against revenue of cost-bearing interests:

a) Examples of allowable costs include management salaries; labor; payroll taxes and benefits; workers' compensation insurance; general insurance; taxes (excluding income and property taxes); supplies and tools; power; maintenance and repairs; office; accounting; engineering; treatment; legal fees; transportation; miscellaneous; capital expenditures; and the imputed cost of self consumed product.

b) Interest, depreciation, or any expense not directly related to the unit will shall not be included as allowable costs.

11. "Production asset" means any asset located at the well site that is used to bring oil or gas products to a point of sale or transfer of ownership.

B. The discount rate shall be determined by the Property Tax Division using methods such as the weighted cost of capital method.

1. The cost of debt shall consider market yields. The cost of equity shall be determined by the capital asset pricing model, risk premium model, discounted cash flow model, a combination thereof, or any other accepted methodology.

2. The discount rate shall reflect the current yield requirements of investors purchasing similar properties, taking into consideration income, income taxes, risk, expenses, inflation, and physical and locational characteristics.

3. The discount rate shall contain the same elements as the expected income stream.

C. Assessment Procedures.

1. Underground rights in lands containing deposits of oil or gas and the related tangible property shall be assessed by the Property Tax Division in the name of the unit operator, the independent operator, or other person as the facts may warrant.

2. The taxable value of underground oil and gas rights shall be determined by discounting future net revenues to their present value as of the lien date of the assessment year and then subtracting the value of applicable exempt federal, state, and Indian royalty interests.

3. The reasonable taxable value of productive underground oil and gas rights shall be determined by the methods described in C.2. of this rule or such other valuation method that the Tax Commission believes to be reasonably determinative of the property's fair market value.

4. The value of the production assets shall be considered in the value of the oil and gas reserves as determined in C.2. above. Any other tangible property shall be separately valued at fair market value by the Property Tax Division.

5. The minimum value of the property shall be the value of the production assets.

D. Collection by Operator.

1. The unit operator may request the Property Tax Division to separately list the value of the working interest, and the value of the royalty interest on the Assessment Record. When such a request is made, the unit operator is responsible to provide the Property Tax Division with the necessary information needed to compile this list. The unit operator may make a reasonable estimate of the ad valorem tax liability for a given period and may withhold funds from amounts due to royalty. Withheld funds shall be sufficient to ensure payment of the ad valorem tax on each fractional interest according to the estimate made.

a) If a unit operating agreement exists between the unit operator and the fractional working interest owners, the unit operator may withhold or collect the tax according to the terms of that agreement.

b) In any case, the unit operator and the fractional interest owner may make agreements or arrangements for withholding or otherwise collecting this tax. This may be done whether or not that practice is consistent with the preceding paragraphs so long as all requirements of the law are met. When a fractional interest owner has had funds withheld to cover the estimated ad valorem tax liability and the operator fails to remit such taxes to the county when due, the fractional interest owner shall be indemnified from any further ad valorem tax liability to the extent of the withholding.

c) The unit operator shall compare the amount withheld to the taxes actually due, and return any excess amount to the fractional interest owner within 60 days after the delinquent date of the tax. At the request of the fractional interest owner the excess may be retained by the unit operator and applied toward the fractional interest owner's tax liability for the subsequent year.

2. The penalty provided for in Section 59-2-210 is intended to ensure collection by the county of the entire tax due. Any unit operator who has paid this county imposed penalty, and thereafter collects from the fractional interest holders any part of their tax due, may retain those funds as reimbursement against the penalty paid.

3. Interest on delinquent taxes shall be assessed as set forth in Section 59-2-1331.

4. Each unit operator may be required to submit to the Property Tax Division a listing of all fractional interest owners and their interests upon specific request of the Property Tax Division. Working interest owners, upon request, shall be required to submit similar information to unit operators.

R884-24P-14. Valuation of Real Property Encumbered by Preservation Easements Pursuant to Utah Code Ann. Section 59-2-303.

A. The assessor shall take into consideration any preservation easements attached to historically significant real property and structures when determining the property's value.

B. After the preservation easement has been recorded with the county recorder, the property owner of record shall submit to the county assessor and the Tax Commission a notice of the preservation easement containing the following information:

1. the property owner's name;

2. the address of the property; and

3. the serial number of the property.

C. The county assessor shall review the property and incorporate any value change due to the preservation easement in the following year's assessment roll.

R884-24P-16. Assessment of Interlocal Cooperation Act Project Entity Properties Pursuant to Utah Code Ann. Section 11-13-25.

A. Definitions:

1. "Utah fair market value" means the fair market value of that portion of the property of a project entity located within Utah upon which the fee in lieu of ad valorem property tax may be calculated.

2. "Fee" means the annual fee in lieu of ad valorem property tax payable by a project entity pursuant to Section 11-13-25.

3. "Energy supplier" means an entity that purchases any capacity, service or other benefit of a project to provide electrical service.

4. "Exempt energy supplier" means an energy supplier whose tangible property is exempted by Article XIII, Sec. 2. of the Constitution of Utah from the payment of ad valorem property tax.

5. "Optimum operating capacity" means the capacity at which a project is capable of operating on a sustained basis taking into account its design, actual operating history, maintenance requirements, and similar information from comparable projects, if any. The determination of the projected and actual optimum operating capacities of a project shall recognize that projects are not normally operated on a sustained basis at 100 percent of their designed or actual capacities and that the optimum level for operating a project on a sustained basis may vary from project to project.

6. "Property" means any electric generating facilities, transmission facilities, distribution facilities, fuel facilities, fuel transportation facilities, water facilities, land, water or other existing facilities or tangible property owned by a project entity and required for the project which, if owned by an entity required to pay ad valorem property taxes, would be subject to assessment for ad valorem tax purposes.

7. "Sold," for the purpose of interpreting D, means the first sale of the capacity, service, or other benefit produced by the project without regard to any subsequent sale, resale, or lay-off of that capacity, service, or other benefit.

8. "Taxing jurisdiction" means a political subdivision of this state in which any portion of the project is located.

9. All definitions contained in the Interlocal Cooperation Act, Section 11-13-3, as in effect on December 31, 1989, apply to this rule.

B. The Tax Commission shall determine the fair market value of the property of each project entity. Fair market value shall be based upon standard appraisal theory and shall be determined by correlating estimates derived from the income and cost approaches to value described below.

1. The income approach to value requires the imputation of an income stream and a capitalization rate. The income stream may be based on recognized indicators such as average income, weighted income, trended income, present value of future income streams, performance ratios, and discounted cash flows. The imputation of income stream and capitalization rate shall be derived from the data of other similarly situated companies. Similarity shall be based on factors such as location, fuel mix, customer mix, size and bond ratings. Estimates may also be imputed from industry data generally. Income data from similarly situated companies will be adjusted to reflect differences in governmental regulatory and tax policies.

2. The cost approach to value shall consist of the total of the property's net book value of the project's property. This total shall then be adjusted for obsolescence if any.

3. In addition to, and not in lieu of, any adjustments for obsolescence made pursuant to B.2., a phase-in adjustment shall be made to the assessed valuation of any new project or expansion of an existing project on which construction commenced by a project entity after January 1, 1989 as follows:

a) During the period the new project or expansion is valued as construction work in process, its assessed valuation shall be multiplied by the percentage calculated by dividing its projected production as of the projected date of completion of construction by its projected optimum operating capacity as of that date.

b) Once the new project or expansion ceases to be valued as construction work in progress, its assessed valuation shall be multiplied by the percentage calculated by dividing its actual production by its actual optimum operating capacity. After the new project or expansion has sustained actual production at its optimum operating capacity during any tax year, this percentage shall be deemed to be 100 percent for the remainder of its useful life.

C. If portions of the property of the project entity are located in states in addition to Utah and those states do not apply a unit valuation approach to that property, the fair market value of the property allocable to Utah shall be determined by computing the cost approach to value on the basis of the net book value of the property located in Utah and imputing an estimated income stream based solely on the value of the Utah property as computed under the cost approach. The correlated value so determined shall be the Utah fair market value of the property.

D. Before fixing and apportioning the Utah fair market value of the property to the respective taxing jurisdictions in which the property, or a portion thereof is located, the Utah fair market value of the property shall be reduced by the percentage of the capacity, service, or other benefit sold by the project entity to exempt energy suppliers.

E. For purposes of calculating the amount of the fee payable under Section 11-13-25(3), the percentage of the project that is used to produce the capacity, service or other benefit sold shall be deemed to be 100 percent, subject to adjustments provided by this rule, from the date the project is determined to be commercially operational.

F. In computing its tax rate pursuant to the formula specified in Section 59-2-913(2), each taxing jurisdiction in which the project property is located shall add to the amount of its budgeted property tax revenues the amount of any credit due to the project entity that year under Section 11-13-25(3), and shall divide the result by the sum of the taxable value of all property taxed, including the value of the project property apportioned to the jurisdiction, and further adjusted pursuant to the requirements of Section 59-2-913.

G. B.1. and B.2. are retroactive to the lien date of January 1, 1984. B.3. is effective as of the lien date of January 1, 1989. The remainder of this rule is retroactive to the lien date of January 1, 1988.

R884-24P-17. Reappraisal of Real Property by County Assessors Pursuant to Utah Constitution, Article XIII, Subsection 11, and Utah Code Ann. Sections 59-2-303, 59-2-302, and 59-2-704.

A. The following standards shall be followed in sequence when performing a reappraisal of all classes of locally-assessed real property within a county.

1. Conduct a preliminary survey and plan.

a) Compile a list of properties to be appraised by property class.

b) Assemble a complete current set of ownership plats.

c) Estimate personnel and resource requirements.

d) Construct a control chart to outline the process.

2. Select a computer-assisted appraisal system and have the system approved by the Property Tax Division.

3. Obtain a copy of all probable transactions from the

recorder's office for the three-year period ending on the effective date of reappraisal.

4. Perform a use valuation on agricultural parcels using the most recent set of aerial photographs covering the jurisdiction.

a) Perform a field review of all agricultural land, dividing up the land by agricultural land class.

b) Transfer data from the aerial photographs to the current ownership plats, and compute acreage by class on a per parcel basis.

c) Enter land class information and the calculated agricultural land use value on the appraisal form.

5. Develop a land valuation guideline.

6. Perform an appraisal on improved sold properties considering the three approaches to value.

7. Develop depreciation schedules and time-location modifiers by comparing the appraised value with the sale price of sold properties.

8. Organize appraisal forms by proximity to each other and by geographical area. Insert sold property information into the appropriate batches.

9. Collect data on all nonsold properties.

10. Develop capitalization rates and gross rent multipliers.

11. Estimate the value of income-producing properties using the appropriate capitalization method.

12. Input the data into the automated system and generate preliminary values.

13. Review the preliminary figures and refine the estimate based on the applicable approaches to value.

14. Develop an outlier analysis program to identify and correct clerical or judgment errors.

15. Perform an assessment/sales ratio study. Include any new sale information.

16. Make a final review based on the ratio study including an analysis of variations in ratios. Make appropriate adjustments.

17. Calculate the final values and place them on the assessment role.

18. Develop and publish a sold properties catalog.

19. Establish the local Board of Equalization procedure.

20. Prepare and file documentation of the reappraisal program with the local Board of Equalization and Property Tax Division.

B. The Tax Commission shall provide procedural guidelines for implementing the above requirements.

R884-24P-19. Appraiser Designation Program Pursuant to Utah Code Ann. Sections 59-2-701 and 59-2-702.

A. "State Registered Appraiser," State Certified General Appraiser, and "State Certified Residential Appraiser" are as defined in Section 61-2b-2.

B. The ad valorem training and designation program consists of several courses and practicums.

1. Certain courses must be sanctioned by either the International Association of Assessing Officers (IAAO) or the Western States Association of Tax Administrators (WSATA).

2. Most courses are one week in duration, with an examination held on the final day. The courses comprising the basic designation program are:

a) Course A - Assessment Practice in Utah;

b) Course B - Fundamentals of Real Property Appraisal (IAAO);

c) Course C - Mass Appraisal of Land;

d) Course D - Building Analysis and Valuation;

e) Course E - Income Approach to Valuation (IAAO);

f) Course G - Development and Use of Personal Property Schedules; and

g) Course H - Appraisal of Public Utilities and Railroads (WSATA).

C. There are four recognized ad valorem designations: Ad Valorem Residential Appraiser, Ad Valorem General Real Property Appraiser, Ad Valorem Personal Property Auditor/Appraiser, and Ad Valorem Centrally Assessed Valuation Analyst. The designations are granted only to individuals working as appraisers, review appraisers, valuation auditors, or analysts/administrators providing oversight and direction to appraisers and auditors.

1. Ad Valorem Residential Appraiser:

a) Requires the successful completion of Courses A, B, C, D, and a comprehensive residential field practicum, and attainment of state registered or certified appraiser status.

b) Upon designation, the appraiser may value residential, vacant, and agricultural property for ad valorem taxation purposes.

2. Ad Valorem General Real Property Appraiser:

a) Requires the successful completion of Courses A, B, C, D, and E and a comprehensive field practicum including both residential and commercial properties, and attainment of state registered or certified appraiser status.

b) Upon designation, the appraiser may value all types of real property for ad valorem taxation purposes.

3. Ad Valorem Personal Property Auditor/Appraiser:

a) Requires the successful completion of Courses A, B, and G, and a comprehensive auditing practicum.

b) Upon designation, the auditor/appraiser may value personal property for ad valorem taxation purposes.

4. Ad Valorem Centrally Assessed Valuation Analyst:

a) Requires the successful completion of Courses A, B, E, and H, and a comprehensive valuation practicum, and attainment of state registered or certified appraiser status.

b) Upon designation, the analyst may value centrally assessed property for ad valorem taxation purposes.

D. Candidates must pass the final examination for each course with a grade of 70 points or more to be successful.

E. If a candidate fails to receive a passing grade on a final examination, one re-examination is allowed. If the re-examination is not successful, the individual must retake the failed course. The cost to retake the failed course will not be borne by the Tax Commission.

F. A practicum involves the appraisal or audit of selected properties. The candidate's supervisor must formally request that the Property Tax Division administer a practicum.

1. Emphasis is placed on those types of properties the candidate will most likely encounter on the job.

2. A trainer, assigned by the Tax Commission, will oversee and administer the practicum.

G. An individual holding a specified designation can qualify for other designations by meeting the additional requirements outlined above.

H. Maintaining designated status requires completion of 20 hours of Tax Commission approved classroom work every two years. Beginning January 1, 1998, maintaining designated status will require completion of 28 hours of Tax Commission approved classroom work every two years.

I. Upon termination of employment from any Utah assessment jurisdiction, or if the individual is no longer working primarily as an appraiser, review appraiser, valuation auditor, or analyst/administrator in appraisal matters, designation is automatically revoked.

1. Ad valorem designation status may be reinstated if the individual secures employment in any Utah assessment jurisdiction within four years from the prior termination.

2. If more than four years elapse between termination and rehire, and

a) the individual has been employed in a closely allied field, then the individual may challenge the course examinations. Upon successfully challenging all required course examinations, prior designation status will be reinstated; or

b) if the individual has not been employed in real estate valuation or a closely allied field, the individual must retake all required courses and pass the final examinations with a score of 70 or more.

R884-24P-20. Construction Work in Progress Pursuant to Utah Constitution Art. XIII, Section 2 and Utah Code Ann. Sections 59-2-201 and 59-2-301.

A. For purposes of this rule:

1. Construction work in progress means improvements as defined in Section 59-2-102, and personal property as defined in Section 59-2-102, not functionally complete as defined in A.6.

2. Project means any undertaking involving construction, expansion or modernization.

3. "Construction" means:

a) creation of a new facility;

b) acquisition of personal property; or

c) any alteration to the real property of an existing facility other than normal repairs or maintenance.

4. Expansion means an increase in production or capacity as a result of the project.

5. Modernization means a change or contrast in character or quality resulting from the introduction of improved techniques, methods or products.

6. Functionally complete means capable of providing economic benefit to the owner through fulfillment of the purpose for which it was constructed. In the case of a cost-regulated utility, a project shall be deemed to be functionally complete when the operating property associated with the project has been capitalized on the books and is part of the rate base of that utility.

7. Allocable preconstruction costs means expenditures associated with the planning and preparation for the construction of a project. To be classified as an allocable preconstruction cost, an expenditure must be capitalized.

8. Cost regulated utility means a power company, oil and gas pipeline company, gas distribution company or telecommunication company whose earnings are determined by a rate of return applied to rate base. Rate of return and rate base are set and approved by a state or federal regulatory commission.

9. Residential means single-family residences and duplex apartments.

10. Unit method of appraisal means valuation of the various physical components of an integrated enterprise as a single going concern. The unit method may employ one or more of the following approaches to value: the income approach, the cost approach, and the stock and debt approach.

B. All construction work in progress shall be valued at "full cash value" as described in this rule.

C. Discount Rates

For purposes of this rule, discount rates used in valuing all projects shall be determined by the Tax Commission, and shall be consistent with market, financial and economic conditions.

D. Appraisal of Allocable Preconstruction Costs.

1. If requested by the taxpayer, preconstruction costs associated with properties, other than residential properties, may be allocated to the value of the project in relation to the relative amount of total expenditures made on the project by the lien date. Allocation will be allowed only if the following conditions are satisfied by January 30 of the tax year for which the request is sought:

a) a detailed list of preconstruction cost data is supplied to the responsible agency;

b) the percent of completion of the project and the preconstruction cost data are certified by the taxpayer as to their accuracy.

2. The preconstruction costs allocated pursuant to D.1. of this rule shall be discounted using the appropriate rate determined in C. The discounted allocated value shall either be added to the values of properties other than residential properties determined under E.1. or shall be added to the values determined under the various approaches used in the unit method of valuation determined under F.

3. The preconstruction costs allocated under D. are subject to audit for four years. If adjustments are necessary after examination of the records, those adjustments will be classified as property escaping assessment.

E. Appraisal of Properties not Valued under the Unit Method.

1. The full cash value, projected upon completion, of all properties valued under this section, with the exception of residential properties, shall be reduced by the value of the allocable preconstruction costs determined D. This reduced full cash value shall be referred to as the "adjusted full cash value."

2. On or before January 1 of each tax year, each county assessor and the Tax Commission shall determine, for projects not valued by the unit method and which fall under their respective areas of appraisal responsibility, the following:

a) The full cash value of the project expected upon completion.

b) The expected date of functional completion of the project currently under construction.

(1) The expected date of functional completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

c) The percent of the project completed as of the lien date.

(1) Determination of percent of completion for residential properties shall be based on the following percentage of completion:

(a) 10 - Excavation-foundation

(b) 30 - Rough lumber, rough labor

(c) 50 - Roofing, rough plumbing, rough electrical, heating

(d) 65 - Insulation, drywall, exterior finish

(e) 75 - Finish lumber, finish labor, painting

(f) 90 - Cabinets, cabinet tops, tile, finish plumbing, finish electrical

(g) 100 - Floor covering, appliances, exterior concrete, misc.

(2) In the case of all other projects under construction and valued under this section the percent of completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

3. Upon determination of the adjusted full cash value for nonresidential projects under construction or the full cash value expected upon completion of residential projects under construction, the expected date of completion, and the percent of the project completed, the assessor shall do the following:

a) multiply the percent of the residential project completed by the total full cash value of the residential project expected upon completion; or in the case of nonresidential projects,

b) multiply the percent of the nonresidential project completed by the adjusted full cash value of the nonresidential project;

c) adjust the resulting product of D.3.a) or D.3.b) for the expected time of completion using the discount rate determined under C.

F. Appraisal of Properties Valued Under the Unit Method of Appraisal.

1. No adjustments under this rule shall be made to the income indicator of value for a project under construction that is owned by a cost-regulated utility when the project is allowed in rate base.

2. The full cash value of a project under construction as of January 1 of the tax year, shall be determined by adjusting the cost and income approaches as follows:

a) Adjustments to reflect the time value of money in appraising construction work in progress valued under the cost and income approaches shall be made for each approach as follows:

(1) Each company shall report the expected completion dates and costs of the projects. A project expected to be completed during the tax year for which the valuation is being determined shall be considered completed on January 1 or July 1, whichever is closest to the expected completion date. The Tax Commission shall determine the expected completion date for any project whose completion is scheduled during a tax year subsequent to the tax year for which the valuation is being made.

(2) If requested by the company, the value of allocable preconstruction costs determined in D. shall then be subtracted from the total cost of each project. The resulting sum shall be referred to as the adjusted cost value of the project.

(3) The adjusted cost value for each of the future years prior to functional completion shall be discounted to reflect the present value of the project under construction. The discount rate shall be determined under C.

(4) The discounted adjusted cost value shall then be added to the values determined under the income approach and cost approach.

b) No adjustment will be made to reflect the time value of money for a project valued under the stock and debt approach to value.

G. This rule shall take effect for the tax year 1985.

R884-24P-24. Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918 through 59-2-924.

A. The county auditor must notify all real property owners of property valuation and tax changes on the Notice of Property Valuation and Tax Changes form.

1. If a county desires to use a modified version of the Notice of Property Valuation and Tax Changes, a copy of the proposed modification must be submitted for approval to the Property Tax Division of the Tax Commission no later than March 1.

a) Within 15 days of receipt, the Property Tax Division will issue a written decision, including justifications, on the use of the modified Notice of Property Valuation and Tax changes.

b) If a county is not satisfied with the decision, it may petition for a hearing before the Tax Commission as provided in R861-1A-4.

2. The Notice of Property Valuation and Tax Changes, however modified, must contain the same information as the unmodified version. A legal description may be included at the option of the county.

B. The Notice of Property Valuation and Tax Changes must be completed by the county auditor in its entirety, except in the following circumstances:

1. New property is created by a new legal description; or

2. The status of the improvements on the property has changed.

3. In instances where partial completion is allowed, the term nonapplicable will be entered in the appropriate sections of the Notice of Property Valuation and Tax Changes.

4. If the county auditor determines that conditions other than those outlined in this section merit deletion, the auditor may enter the term "nonapplicable" in appropriate sections of the Notice of Property Valuation and Tax Changes only after receiving approval from the Property Tax Division in the manner described in A.

C. Real estate assessed under the Farmland Assessment Act of 1969 must be reported at full market value, with the value based upon Farmland Assessment Act rates shown parenthetically.

D. All completion dates specified for the disclosure of property tax information must be strictly observed.

1. Requests for deviation from the statutory completion dates must be submitted in writing on or before June 1, and receive the approval of the Property Tax Division in the manner described in A.

E. If the proposed rate exceeds the certified rate, jurisdictions in which the fiscal year is the calendar year are required to hold public hearings even if budget hearings have

already been held for that fiscal year.

F. If the cost of public notice required under Sections 59-2-918 and 59-2-919 is greater than one percent of the property tax revenues to be received, an entity may combine its advertisement with other entities, or use direct mail notification.

G. Calculation of the amount and percentage increase in property tax revenues required by Sections 59-2-918 and 59-2-919, shall be computed by comparing property taxes levied for the current year with property taxes collected the prior year, without adjusting for revenues attributable to new growth. Calculations of the amount and percentage increase or decrease in the total budget shall be based on total budgeted revenues.

H. If a taxing district has not completed the tax rate setting process as prescribed in Sections 59-2-919 and 59-2-920 by August 17, the county auditor must seek approval from the Tax Commission to use the certified rate in calculating taxes levied.

I. The value of property subject to the uniform fee under Section 59-2-405 is excluded from taxable value for purposes of calculating new growth, the certified tax rate, and the proposed tax rate.

J. The value and taxes of property subject to the uniform fee under Section 59-2-405, as well as tax increment distributions and related taxable values of redevelopment agencies, are excluded when calculating the percentage of property taxes collected as provided in Section 59-2-913.

K. The following formulas and definitions shall be used in determining new growth:

1. New growth shall be computed as follows:

a) the taxable value for the current year adjusted for redevelopment minus year-end taxable value for the previous year adjusted for redevelopment; then

b) plus or minus changes in value as a result of factoring; then

c) plus or minus changes in value as a result of reappraisal; then

d) plus or minus any change in value resulting from a legislative mandate or court order.

2. Adjusted new growth equals new growth multiplied by the mean collection rate for the previous five years.

L. The following definitions and formulas shall be used in determining the certified tax rate:

1. Current year adjusted taxable value equals the taxable value for the current year adjusted for redevelopment; then

a) adjusted for estimated value losses due to appeals, using an average percentage loss for the past three years; then

b) adjusted for estimated collection losses.

2. The certified tax rate shall be computed as follows:

a) Last year's taxes collected, excluding redemptions, penalties, interest, rollback taxes, and other miscellaneous collections.

b) Divided by the sum of the current year adjusted taxable value less adjusted new growth.

3. Entities required to set levies for more than one fund must compute an aggregate certified rate. The aggregate certified rate is the sum of the certified rates for individual funds for which separate levies are required by law. The aggregate certified rate computation applies where:

a) the valuation bases for the funds are contained within identical geographic boundaries; and

b) the funds are under the levy and budget setting authority of the same governmental entity.

4. Exceptions to L.3. are the county assessing and collecting levy, as described in Section 59-2-906.1(3), and the additional levies for property valuation and reappraisal, as described in Section 59-2-906.3.

a) These levies may not be included as part of a county's aggregate certified rate. Instead, they must be segregated into a separate aggregate certified rate.

b) The separate aggregate certified rate representing these levies is subject to the proposed tax increase requirements of Sections 59-2-918 and 59-2-919.

M. For purposes of determining the certified tax rate of a municipality incorporated on or after July 1, 1996, the levy imposed for municipal-type services or general county purposes shall be the certified tax rate for municipal-type services or general county purposes, as applicable.

N. No new entity, including a new city, may have a certified tax rate or levy a tax for any particular year unless that entity existed on the first day of that calendar year.

R884-24P-26. Requirements of the Farmland Assessment Act of 1969 Pursuant to Utah Code Ann. Sections 59-2-501 through 59-2-515.

A. A parcel of land less than five acres in size may qualify for assessment under the provisions of the Farmland Assessment Act (FAA) if it:

1. has ownership identical to and is used in conjunction with a qualifying parcel of five or more acres;

2. is in close proximity to the primary farm;

3. has a direct relationship to the total agricultural enterprise;

4. makes a significant contribution to the enterprise's total production; and

5. meets all other requirements set forth in Section 59-2-503.

B. FAA application forms shall provide for reporting of the current serial number, legal description, ownership, and all other pertinent information of the subject properties.

1. The assessor shall maintain all FAA records in the assessor's office. These records shall include the original year of application and clearly indicate the number of years these properties have been assessed and taxed under the FAA.

2. All parcels assessed and taxed under the provisions of the FAA shall be so designated on the assessment roll.

3. All FAA applications, including those resulting from changes in ownership, legal description, additions, or deletions, must be recorded.

C. For FAA purposes, a property may be considered contiguous even though it is severed by a public highway, unimproved road, fence, canal, or waterway.

D. Upon withdrawal or change in use of a parcel assessed under the provisions of the FAA, the assessor shall immediately calculate the amount of the roll-back tax due and the county shall bill the roll-back tax due.

1. The amount of the lien shall be shown on the recorded roll-back statement.

2. If the roll-back tax is not paid to the county treasurer within 30 days after billing, the county treasurer shall proceed

to collect the amount due.

3. If, after a period of being exempt, the property is used for a purpose that does not qualify for assessment under the FAA, the roll-back provisions of FAA shall apply to the time the property was under the provisions of the FAA, up to a maximum of five years, less the number of years that the property was exempt.

E. Land that becomes ineligible for farmland assessment solely as a result of amendments to Sections 59-2-501 through 59-2-515 is not subject to the roll-back tax if the owner of that land notifies the county assessor of the land's ineligibility for farmland assessment on or before January 1, 1994.

F. Applications for assessment and taxation under the FAA may be made only by the owner of farm property. A lessee or purchaser of any parcel may arrange with the owner to farm such land, but the lessee or purchaser may not make application for farmland assessment in the lessee's or purchaser's name.

G. A leased parcel may be assessed under the FAA if it meets all of the eligibility requirements set forth in Section 59-2-503.

H. All applications for assessment under the provisions of the FAA shall be accompanied by documentation verifying the agricultural production of the property for the two years immediately preceding the year of application. The county assessor or the commission may request any additional information needed to determine eligibility under Section 59-2-503.

R884-24P-27. Standards for Assessment Level and Uniformity of Performance Pursuant to Utah Code Ann. Section 59-2-704.5.

A. Definitions.

1. "Coefficient of dispersion (COD)" means the average deviation of a group of assessment ratios taken around the median and expressed as a percent of that measure.

2. "Coefficient of variation (COV)" means the standard deviation expressed as a percentage of the mean.

3. "Nonparametric" means data samples that are not normally distributed.

4. "Parametric" means data samples that are normally distributed.

5. "Urban counties" means counties classified as first or second class counties pursuant to Section 17-16-13.

B. The Tax Commission adopts the following standards of assessment performance regarding assessment level and uniformity:

1. Adjustment shall be ordered for a property class or subclass if the measure of central tendency is not within 10 percent of the legal level of assessment or the 95 percent confidence interval of the measure of central tendency does not contain the legal level of assessment.

a) The measure of central tendency shall be the mean for parametric samples and the median for nonparametric samples.

b) The adjustment shall be calculated by dividing the legal level of assessment by the measure of central tendency when uniformity meets the standards in B.2., or by the 95 percent confidence interval limit nearest the legal level of assessment when the standards in B.2. are not met.

2. Corrective action for the property being appraised under the cyclical appraisal plan for a given year shall be ordered if the measure of dispersion is outside the following limits for the coefficient of dispersion (COD), or for the coefficient of variation (COV) when data are normally distributed:

a) In urban counties, the limit for the COD is 15 percent or less for primary residential and commercial property, and 20 percent or less for vacant land and secondary residential property.

b) In rural counties, the limit for the COD is 20 percent or less for primary residential and commercial property, and 25 percent or less for vacant land and secondary residential property.

c) The limit for the COV is 1.25 times the COD.

d) Corrective action may contain language requiring a county to create or follow its cyclical appraisal plan.

e) If the sample size does not meet the requirements of B.3., or if there is reason to question the reliability of statistical data achieved under B.3., an alternate performance evaluation shall be conducted, which may result in corrective action. The alternate performance evaluation shall include review and analysis of the following:

(1) the county's procedures for use and collection of market data, including sales, income, rental, expense, vacancy rates, and capitalization rates;

(2) the county-wide land, residential, and commercial valuation guidelines and their associated procedures for maintaining current market values;

(3) the accuracy and uniformity of the county's individual property data through a field audit of randomly selected properties;

(4) the county's level of personnel training, ratio of appraisers to parcels, level of funding, and other workload and resource considerations.

3. To achieve statistical accuracy in determining assessment level under B.1. and uniformity under B.2. for any property class or subclass, the acceptable sample size shall consist of 10 or more ratios.

a) To meet the minimum sample size, the study period may be extended.

b) A smaller sample size may be used if that sample size is at least 10 percent of the class or subclass population.

c) All input to the sample used to measure performance shall be completed by September first of each study cycle.

R884-24P-28. Reporting Requirements For Leased or Rented Personal Property, Pursuant to Utah Code Ann. Section 59-2-306.

A. The procedure set forth herein is required in reporting heavy equipment leased or rented during the tax year.

1. On forms or diskette provided by the Tax Commission, the owner of leased or rented heavy equipment shall file semi-annual reports with the Tax Commission for the periods January 1 through June 30, and July 1 through December 31 of each year. The reports shall contain the following information:

a) a description of the leased or rented equipment;

b) the year of manufacture and acquistion cost;

c) a listing, by month, of the counties where the equipment has situs; and

d) any other information required.

2. For purposes of this rule, situs is established when leased or rented equipment is kept in an area for thirty days. Once situs is established, any portion of thirty days during which that equipment stays in that area shall be counted as a full month of situs. In no case may situs exceed twelve months for any year.

3. The completed report shall be submitted to the Property Tax Division of the Tax Commission within thirty days after each reporting period.

a) Noncompliance will require accelerated reporting.

R884-24P-29. Taxable Household Furnishings Pursuant to Utah Code Ann. Section 59-2-1113.

A. Household furnishings, furniture, and equipment are subject to property taxation if:

1. the owner of the abode commonly receives legal consideration for its use, whether in the form of rent, exchange, or lease payments; or

2. the abode is held out as available for the rent, lease, or use by others.

R884-24P-32. Leasehold Improvements Pursuant to Utah Code Ann. Section 59-2-303.

A. Leasehold improvements under the control of the lessee shall be taxed as personal property of the lessee.

B. If not taxed as personal property of the lessee, the value of leasehold improvements shall be included in the value of the real property.

R884-24P-33. 1998 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301.

A. Definitions.

1. "Acquisition cost" means all costs required to put an item into service, including purchase price, freight and shipping costs; installation, engineering, erection or assembly costs; and excise and sales taxes.

a) Indirect costs such as debugging, licensing fees and permits, insurance or security are not included in the acquisition cost.

b) Acquisition cost may correspond to the cost new for new property, or cost used for used property.

2. "Actual cost" includes the value of components necessary to complete the vehicle, such as tanks, mixers, special containers, passenger compartments, special axles, installation, engineering, erection, or assembly costs.

a) Actual cost does not include sales or excise taxes, maintenance contracts, registration and license fees, dealer charges, tire tax, freight, or shipping costs.

3. "Cost new" means the manufacturer's suggested retail price or the actual cost of the property when purchased new. For property purchased used the cost new may be estimated by the taxing authority.

4. "Percent good" means an estimate of value, expressed as a percentage, based on a property's acquisition cost or cost new, adjusted for depreciation and appreciation of all kinds.

a) The percent good factor is applied against the acquisition cost or the cost new to derive taxable value for the property.

b) Percent good schedules are derived from an analysis of the Internal Revenue Service Class Life, the Marshall and Swift Cost index, and Manufactured Housing Section of the Marshall Valuation Service, and vehicle valuation guides such as NADA.

B. Each year the Property Tax Division shall update and publish percent good schedules for use in computing personal property valuation.

1. Proposed schedules shall be transmitted to county assessors and interested parties for comment before adoption.

2. A public comment period will be scheduled each year and a public hearing will be scheduled if requested by ten or more interested parties or at the discretion of the Commission.

3. County assessors may deviate from the schedules when warranted by specific conditions affecting an item of personal property. When a deviation will affect an entire class or type of personal property, a written report, substantiating the changes with verifiable data, must be presented to the Commission. Alternative schedules may not be used without prior written approval of the Commission.

4. The assessor and the Commission may rely on other publications listing costs new or market values when valuing motor vehicles not found in the source guide recommended by the Commission.

C. Other taxable personal property that is not included in the listed classes includes:

1. Supplies on hand as of January 1 at 12:00 noon, including office supplies, shipping supplies, maintenance supplies, replacement parts, lubricating oils, fuel and consumable items not held for sale in the ordinary course of business. Supplies are assessed at total cost, including freight-in.

2. Equipment leased or rented from inventory is subject to ad valorem tax. Refer to the appropriate property class schedule to determine taxable value.

3. Property held for rent or lease is taxable, and is not exempt as inventory. For entities primarily engaged in rent-to-own, inventory on hand at January 1 is exempt and property out on rent-to-own contracts is taxable.

D. Personal property valuation schedules may not be appealed to, or amended by, county boards of equalization.

E. All taxable personal property is classified by expected economic life as follows:

1. Class 1 - Short Life Property. Property in this class has a typical life of more than one year and less than four years. It is fungible in that it is difficult to determine the age of an item retired from service.

a) Examples of property in the class include:

(1) barricades/warning signs;

(2) library materials;

(3) patterns, jigs and dies;

(4) pots, pans, and utensils;

(5) canned computer software;

(6) hotel linen;

(7) wood and pallets; and

(8) video tapes.

b) With the exception of video tapes, taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

c) Video tapes are valued at $15.00 per tape for the first year and $3.00 per tape thereafter.

TABLE 1

Year of Acquisition	Percent Good of Acquisition Cost
97	70%
96	40%
95 and prior	10%

2. Class 2 - Computer Dependent Machinery.

a) Machinery shall be classified as computer dependent machinery if all of the following conditions are met:

(1) The equipment is sold as a single unit. If the invoice(s) break out the computer separately from the machine, the computer must be valued as Class 12 property and the machine as Class 8 property.

(2) The machine cannot operate without the computer and the computer cannot perform functions outside the machine.

(3) The machine can perform multiple functions and is controlled by a programmable central processing unit.

(4) The total cost of the machine and computer combined is depreciated as a unit for income tax purposes.

(5) The capabilities of the machine cannot be expanded by substituting a more complex computer for the original.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 2

Year of Acquisition	Percent Good of Acquisition Cost
97	87%
96	71%
95	61%
94	54%
93	46%
92	37%
91	27%
90 and prior	17%

3. Class 3 - Short Life Trade Fixtures. Property in this class generally consists of electronic types of equipment and includes property subject to rapid functional and economic obsolescence or severe wear and tear.

a) Examples of property in this class include:

(1) office machines;

(2) alarm systems;

(3) shopping carts;

(4) ATM machines;

(5) small equipment rentals;

(6) property subject to a rent-to-own agreement;

(7) telephone equipment and systems;

(8) music systems;

(9) vending machines; and

(10) video game machines.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 3

Year of Acquisition	Percent Good of Acquisition Cost
97	83%
96	67%
95	52%
94	36%
93 and prior	18%

4. Class 4 - Service Equipment. Class 4 property is used by service industries and is subject to a high degree of functional obsolescence.

a) Examples of property in this class include:

(1) service station equipment;

(2) car wash equipment;

(3) bulk and holding tanks;

(4) tire and wheel service equipment;

(5) dry cleaning machines;

(6) mechanical and electrical signs;

(7) clothes washers and dryers;

(8) tanks; and

(9) pumps.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 4

Year of Acquisition	Percent Good of Acquisition Cost
97	88%
96	78%
95	69%
94	59%
93	49%
92	37%
91	25%
90 and prior	13%

5. Class 5 - Long Life Trade Fixtures. Class 5 property is subject to functional obsolescence in the form of style changes.

a) Examples of property in this class include:

(1) furniture;

(2) bars and sinks:

(3) booths, tables and chairs;

(4) beauty and barber shop fixtures;

(5) cabinets and shelves;

(6) displays, cases and racks;

(7) office furniture;

(8) theater seats; and

(9) water slides.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 5

Year of Acquisition	Percent Good of Acquisition Cost
97	89%
96	81%
95	72%
94	64%
93	55%
92	45%
91	34%
90	23%
89 and prior	12%

6. Class 6 - Heavy and Medium Duty Trucks.

a) Examples of property in this class include:

(1) heavy duty trucks; and

(2) medium duty trucks.

b) Taxable value is calculated by applying the percent good factor against the actual cost of the property when

purchased new or 75 percent of the manufacturer's suggested retail price. The taxable value for vehicles purchased used will be determined by applying the percent good factor to the value determined by the assessing authority. For state assessed vehicles, the value of attached equipment will be included in the total vehicle valuation.

c) The 1998 percent good applies to 1998 models purchased in 1997.

d) Trucks weighing two tons or more have a minimum value of $1,750 and a minimum tax of $26.25.

TABLE 6

Year of Model	Percent Good of Cost New
98	90%
97	71%
96	66%
95	61%
94	56%
93	51%
92	46%
91	41%
90	36%
89	31%
88	26%
87	21%
86	16%
85 and prior	10%

7. Class 7 - Medical and Dental Equipment. Class 7 property is subject to a high degree of technological development by the health industry.

a) Examples of property in this class include:

(1) medical and dental equipment and instruments;

(2) exam tables and chairs;

(3) high-tech hospital equipment;

(4) microscopes; and

(5) optical equipment.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 7

Year of Acquisition	Percent Good of Acquisition Cost
97	91%
96	84%
95	78%
94	71%
93	64%
92	56%
91	47%
90	38%
89	29%
88	21%
87 and prior	11%

8. Class 8 - Machinery and Equipment. Property in this class is subject to considerable functional and economic obsolescence created by competition as technologically advanced and more efficient equipment becomes available.

a) Examples of property in this class include:

(1) manufacturing machinery;

(2) amusement rides;

(3) bakery equipment;

(4) distillery equipment;

(5) refrigeration equipment;

(6) nonpetroleum drill rigs;

(7) machine shop equipment;

(8) incinerators;

(9) leased farm equipment;

(10) mining equipment;

(11) ski lift machinery;

(12) printing equipment; and

(13) bottling or cannery equipment.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 8

Year of Acquisition	Percent Good of Acquisition Cost
97	91%
96	84%
95	78%
94	71%
93	64%
92	56%
91	47%
90	38%
89	29%
88	21%
87 and prior	11%

9. Class 9 - Off-Highway Recreational Vehicles.

a) Examples of property in this class include:

(1) dirt and trail motorcycles;

(2) all terrain vehicles;

(3) golf carts; and

(4) snowmobiles.

b) Taxable value is calculated by applying the percent good factor against the cost new or suggested list price from the January-April NADA Motorcycle/Snowmobile/ATV Appraisal Guide.

c) The 1998 percent good applies to 1998 models purchased in 1997.

d) Off-Highway Recreational Vehicles have a minimum value of $500 and a minimum tax of $7.50.

TABLE 9

Year of Model	Percent Good of Cost New
98	90%
97	58%
96	55%
95	52%
94	49%
93	46%
92	43%
91	40%
90	37%
89	34%
88	31%
87	28%
86	25%
85 and prior	22%

10. Class 10 - Railroad Cars. The Class 10 schedule was developed to value the property of railroad car companies. Functional and economic obsolescence is recognized in the developing technology of the shipping industry. Heavy wear and tear is also a factor in valuing this class of property.

a) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 10

Year of Acquisition	Percent Good of Acquisition Cost
97	93%
96	87%
95	83%
94	78%
93	73%
92	67%
91	60%
90	53%
89	47%
88	41%
87	34%
86	26%
85	18%
84 and prior	10%

11. Class 11 - Street Motorcycles.

a) Examples of property in this class include:

(1) street motorcycles;

(2) scooters; and

(3) mopeds.

b) Taxable value is calculated by applying the percent good factor against the original cost new or the suggested list price from the January-April edition of the NADA Motorcycle/Snowmobile/ATV Appraisal Guide.

c) The 1998 percent good applies to 1998 models purchased in 1997.

d) Street motorcycles have a minimum value of $500 and a minimum tax of $7.50.

TABLE 11

Year of Model	Percent Good of Cost New
98	90%
97	71%
96	68%
95	66%
94	63%
93	60%
92	57%
91	55%
90	52%
89	49%
88	46%
87	44%
86	41%
85	38%
84	35%
83	33%
82 and prior	30%

12. Class 12 - Computer Hardware.

a) Examples of property in this class include:

(1) data processing equipment;

(2) personal computers;

(3) main frame computers;

(4) computer equipment peripherals; and

(5) cad/cam systems.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 12

Year of Model	Percent Good of Acquisition Cost
97	85%
96	57%
95	36%
94	23%
93	14%
92 and prior	9%

13. Class 13 - Heavy Equipment.

a) Examples of property in this class include:

(1) construction equipment;

(2) excavation equipment;

(3) loaders;

(4) batch plants;

(5) snow cats; and

(6) power sweepers.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

c) 1998 model equipment purchased in 1997 is valued at 100 percent of acquisition cost.

TABLE 13

Year of Acquisition	Percent Good of Acquisition Cost
97	66%
96	62%
95	59%
94	55%
93	52%
92	48%
91	45%
90	41%
89	38%
88	35%
87	31%
86	28%
85	24%
84 and prior	21%

14. Class 14 - Motor Homes.

a) Taxable value is calculated by applying the percent good against the cost new derived from the January-April edition of the NADA Recreational Vehicle Appraisal Guide.

b) The 1998 percent good applies to 1998 models purchased in 1997.

TABLE 14

Year of Model	Percent Good of Cost New
98	90%
97	67%
96	64%
95	61%
94	57%
93	54%
92	51%
91	48%
90	44%
89	41%
88	38%
87	35%
86	31%
85	28%
84	25%
83	22%
82 and prior	18%

15. Class 15 - Semiconductor Manufacturing Equipment.

Class 15 applies only to equipment used in the production of semiconductor products.

a) Examples of property in this class include:

(1) crystal growing equipment;

(2) die assembly equipment;

(3) wire bonding equipment;

(4) encapsulation equipment;

(5) semiconductor test equipment;

(6) clean room equipment;

(7) chemical and gas systems related to semiconductor manufacturing;

(8) deionized water systems;

(9) electrical systems; and

(10) photo mask and wafer manufacturing dedicated to semiconductor production.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 15

Year of Acquisition	Percent Good of Acquisition Cost
97	74%
96	54%
95	38%
94	24%
93 and prior	10%

16. Class 16 - Long-Life Property. Class 16 property has a long physical life with little obsolescence.

a) Examples of property in this class include:

(1) billboards;

(2) sign towers;

(3) radio towers;

(4) ski lift and tram towers;

(5) non-farm grain elevators; and

(6) bulk storage tanks.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 16

Year of Acquisition	Percent Good of Acquisition Cost
97	94%
96	91%
95	88%
94	86%
93	82%
92	78%
91	73%
90	68%
89	64%
88	62%
87	58%
86	52%
85	46%
84	40%
83	34%
82	28%
81	22%
80	16%
79 and prior	9%

17. Class 17 - Boats.

a) Examples of property in this class include:

(1) boats;

(2) boat motors; and

(3) personal watercraft.

b) Taxable value is calculated by applying the percent good factor against the original cost new or the F.O.B. or P.O.E. price from the ABOS Marine Blue Book.

c) The 1998 percent good applies to 1998 models purchased in 1997.

d) Boats have a minimum value of $500 and a minimum tax of $7.50.

TABLE 17

Year of Model	Percent Good of Cost New
98	90%
97	68%
96	66%
95	64%
94	61%
93	59%
92	56%
91	54%
90	52%
89	49%
88	47%
87	45%
86	42%
85	40%
84	37%
83	35%
82	33%
81	30%
80	28%
79	26%
78 and prior	23%

18. Class 18 - Travel Trailers/Truck Campers.

a) Examples of property in this class include:

(1) travel trailers;

(2) truck campers; and

(3) tent trailers.

b) Taxable value is calculated by applying the percent good factor against the original cost new or, for travel trailers, from the January-April edition of the NADA Recreational Vehicle Appraisal Guide.

c) The 1998 percent good applies to 1998 models purchased in 1997.

d) Trailers and truck campers have a minimum value of $500 and a minimum tax of $7.50.

TABLE 18

Year of Model	Percent Good of Cost New
98	90%
97	71%
96	67%
95	64%
94	60%
93	57%
92	53%
91	50%
90	47%
89	43%
88	40%
87	36%
86	33%
85	29%
84	26%
83	22%
82 and prior	19%

19. Class 19 - Mobile Homes.

a) This class includes mobile homes assessed as personal property.

b) This schedule must be used in conjunction with the Personal Property Mobile Home Valuation Guide published by the Property Tax Division.

c) At the option of the county assessor, mobile homes may be valued applying the same methodology and schedules used in the valuation of mobile homes classified as real property.

TABLE 19

Year of Manufacture	Percent Good of Replacement Cost New
97	97%
96	94%
95	91%
94	88%
93	85%
92	82%
91	78%
90	75%
89	71%
88	68%
87	64%
86	60%
85	56%
84	52%
83	48%
82	45%
81	41%
80	37%
79	33%
78	29%
77	26%
76	24%
75	23%
74	21%
73 and prior	20%

20. Class 20 - Petroleum and Natural Gas Exploration and Production Equipment. Class 20 property is subject to significant functional and economic obsolescence due to the volatile nature of the petroleum industry.

a) Examples of property in this class include:

(1) oil and gas exploration equipment;

(2) distillation equipment;

(3) wellhead assemblies;

(4) holding and storage facilities;

(5) drill rigs;

(6) reinjection equipment;

(7) metering devices;

(8) cracking equipment;

(9) well-site generators, transformers, and power lines;

(10) equipment sheds;

(11) pumps;

(12) radio telemetry units; and

(13) support and control equipment.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 20

Year of Acquisition	Percent Good of Acquisition Cost
97	92%
96	86%
95	82%
94	77%
93	70%
92	63%
91	55%
90	48%
89	41%
88	35%
87	27%
86	18%
85 and prior	9%

21. Class 21 - Commercial and Utility Trailers.

a) Examples of property in this class include:

(1) commercial trailers;

(2) utility trailers;

(3) cargo utility trailers;

(4) boat trailers;

(5) converter gears;

(6) horse and stock trailers; and

(7) all trailers not included in Class 18.

b) Taxable value is calculated by applying the percent good factor against the cost new of the property. For state assessed vehicles, the value of attached equipment will be included in the total vehicle valuation.

c) The 1998 percent good applies to 1998 models purchased in 1997.

d) Commercial and utility trailers have a minimum value of $500 and a minimum tax of $7.50.

TABLE 21

Year of Model	Percent Good of Cost New
98	95%
97	75%
96	71%
95	67%
94	63%
93	59%
92	54%
91	50%
90	46%
89	42%
88	38%
87	33%
86	29%
85	25%
84	21%
83	16%
82 and prior	12%

22. Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans.

a) Class 22 vehicles fall within four subcategories: domestic passenger cars, foreign passenger cars, light trucks, including utility vehicles, and vans.

b) Taxable value is calculated by applying the percent good factor against the manufacturer's suggested retail price in the January NADA book. For state assessed vehicles, the value of attached equipment will be included in the total vehicle valuation.

c) The 1998 percent good applies to 1998 models purchased in 1997.

d) A 20% reduction in value is applied to vehicles with a "rebuilt/restored" designation on the title and registration.

e) A residual value of $500 and a minimum tax of $7.50

applies to cars and light trucks over 18 years old, after all adjustments.

TABLE 22

Percent of M.S.R.P.

Model Year	Domestic	Foreign	Trucks/Utility	Vans
98	88%	92%	98%	88%
97	76%	79%	85%	80%
96	66%	71%	79%	72%
95	57%	63%	75%	65%
94	50%	57%	66%	60%
93	42%	51%	60%	53%
92	35%	43%	52%	48%
91	29%	35%	46%	40%
90	21%	26%	38%	36%
89	17%	23%	35%	30%
88	14%	20%	27%	26%
87	12%	18%	24%	21%
86	9%	14%	23%	16%
85	7%	12%	18%	13%
84	6%	9%	17%	10%
83	5%	8%	15%	9%
82	4%	7%	13%	8%
81	3%	6%	12%	7%
80	2%	5%	10%	6%
79 and older	$500 Recommended Residual Value			

23. Class 23 - Aircraft Not Listed in the Bluebook Price Digest Subject to the Uniform Tax.

a) Examples of property in this class include:

(1) kit-built aircraft;

(2) experimental aircraft;

(3) gliders;

(4) hot air balloons; and

(5) any other aircraft requiring FAA registration.

b) Aircraft subject to the uniform tax, but not listed in the Aircraft Bluebook Price Digest, are valued by applying the percent good factor against the acquisition cost of the aircraft.

c) Aircraft requiring Federal Aviation Agency registration and kept in Utah must be registered with the Motor Vehicle Division of the Tax Commission.

TABLE 23

Year of Acquisition	Percent Good of Acquisition Cost
97	75%
96	71%
95	67%
94	63%
93	59%
92	55%
91	51%
90	47%
89	43%
88	39%
87	35%
86 and prior	31%

24. Class 24 - Leasehold Improvements.

a) This class includes short life leasehold improvements to real property installed by a tenant, including:

(1) walls and partitions;

(2) plumbing and roughed-in fixtures;

(3) floor coverings other than carpet;

(4) store fronts;

(5) decoration;

(6) wiring;

(7) suspended or acoustical ceilings;

(8) heating and cooling systems; and

(9) iron or millwork trim.

b) Taxable value is calculated by applying the percent good factor against the cost of acquisition, including installation.

c) The Class 3 schedule is used to value short life leasehold improvements.

TABLE 24

Year of Installation	Percent of Installation Cost
97	94%
96	88%
95	82%
94	77%
93	71%
92	65%
91	59%
90	54%
89	48%
88	42%
87	36%
86 and prior	30%

F. The provision of this rule shall be implemented and become binding on taxpayers beginning January 1, 1998.

R884-24P-34. Use of Sales or Appraisal Information Gathered in Conjunction With Assessment/Sales Ratio Studies Pursuant to Utah Code Ann. Section 59-2-704.

A. Market data gathered for purposes of an assessment/sales ratio study may be used for valuation purposes only as part of a systematic reappraisal program whereby all similar properties are given equitable and uniform treatment.

B. Sales or appraisal data gathered in conjunction with a ratio study shall not be used for an isolated reappraisal of the sold or appraised properties.

C. Information derived from ratio studies regarding the values assigned to real property and personal property shall not be used to establish the apportionment between real and personal property in future assessments.

R884-24P-35. Annual Affidavit of Exempt Use Pursuant to Utah Code Ann. Section 59-2-1101.

A. The owner of property receiving a full or partial exemption from property tax based on exclusive use for religious, charitable or educational purposes, is required to file the annual affidavit prescribed in Utah Code Ann. Section 59-2-1101.

R884-24P-36. Contents of Real Property Tax Notice Pursuant to Utah Code Ann. Section 59-2-1317.

A. In addition to the information required by Section 59-2-1317, the tax notice for real property shall specify the following:

1. the property identification number;

2. the appraised value of the property and, if applicable, any adjustment for residential exemptions expressed in terms of taxable value;

3. if applicable, tax relief for taxpayers eligible for blind, veteran, or poor abatement or the circuit breaker, which shall be shown as credits to total taxes levied; and

4. itemized tax rate information for each taxing entity and total tax rate.

R884-24P-37. Separate Values of Land and Improvements Pursuant to Utah Code Ann. Sections 59-2-301 and 59-2-305.

A. The county assessor shall maintain an appraisal record of all real property subject to assessment by the county. The record shall include the following information:

1. owner of the property;
2. property identification number;
3. description and location of the property; and
4. full market value of the property.

B. Real property appraisal records shall show separately the value of the land and the value of any improvements.

R884-24P-38. Nonoperating Railroad Properties Pursuant to Utah Code Ann. Section 59-2-201(4).

A. Definitions.

1. "Railroad right of way" (RR-ROW) means a strip of land upon which a railroad company constructs the road bed.

a. RR-ROW within incorporated towns and cities shall consist of 50 feet on each side of the main line main track, branch line main track or main spur track. Variations to the 50-foot standard shall be approved on an individual basis.

b. RR-ROW outside incorporated towns and cities shall consist of the actual right-of-way owned if not in excess of 100 feet on each side of the center line of the main line main track, branch line main track, or main spur track. In cases where unusual conditions exist, such as mountain cuts, fills, etc., and more than 100 feet on either side of the main track is required for ROW and where small parcels of land are otherwise required for ROW purposes, the necessary additional area shall be reported as RR-ROW.

B. Assessment of nonoperating railroad properties. Railroad property formerly assessed by the unitary method which has been determined to be nonoperating, and which is not necessary to the conduct of the business, shall be assessed separately by the local county assessor. For purposes of this rule:

C. Assessment procedures.

1. Properties charged to nonoperating accounts are reviewed by the Property Tax Division, and if taxable, are assessed and placed on the local county assessment rolls separately from the operating properties.

2. RR-ROW is considered as operating and as necessary to the conduct and contributing to the income of the business. Any revenue derived from leasing of property within the RR-ROW is considered as railroad operating revenues.

3. Real property outside of the RR-ROW which is necessary to the conduct of the railroad operation is considered as part of the unitary value. Some examples are: company homes occupied by superintendents and other employees on 24-hour call, storage facilities for railroad operations, communication facilities, and spur tracks outside of RR-ROW.

4. Abandoned RR-ROW is considered as nonoperating and shall be reported as such by the railroad companies.

5. Real property outside of the RR-ROW which is not necessary to the conduct of the railroad operations is classified as nonoperating and therefore assessed by the local county assessor. Some examples are: land leased to service station operations, grocery stores, apartments, residences, and agricultural uses.

6. RR-ROW obtained by government grant or act of Congress is deemed operating property.

D. Notice of Determination. It is the responsibility of the Property Tax Division to provide a notice of determination to the owner of the railroad property and the assessor of the county where the railroad property is located immediately after such determination of operating or nonoperating status has been made. If there is no appeal to the notice of determination, the Property Tax Division shall notify the assessor of the county where the property is located so the property may be placed on the roll for local assessment.

E. Appeals. Any interested party who wishes to contest the determination of operating or nonoperating property may do so by filing a request for agency action within ten days of the notice of determination of operating or nonoperating properties. Request for agency action may be made pursuant to Utah Code Ann. Title 63, Chapter 46b.

R884-24P-40. Exemption of Parsonages, Rectories, Monasteries, Homes and Residences Pursuant to Utah Code Annotated 59-2-1101(d) and Article XIII, Section 2 of the Utah Constitution.

A. Parsonages, rectories, monasteries, homes and residences if used exclusively for religious purposes, are exempt from property taxes if they meet all of the following requirements:

1. The land and building are owned by a religious organization which has qualified with the Internal Revenue Service as a Section 501(c)(3) organization and which organization continues to meet the requirements of that section.

2. The building is occupied only by persons whose full time efforts are devoted to the religious organization and the immediate families of such persons.

3. The religious organization, and not the individuals who occupy the premises, pay all payments, utilities, insurance, repairs, and all other costs and expenses related to the care and maintenance of the premises and facilities.

B. The exemption for one person and the family of such person is limited to the real estate that is reasonable for the residence of the family and which remains actively devoted exclusively to the religious purposes. The exemption for more than one person, such as a monastery, is limited to that amount of real estate actually devoted exclusively to religious purposes.

C. Vacant land which is not actively used by the religious organization, is not deemed to be devoted exclusively to religious purposes, and is therefore not exempt from property taxes.

1. Vacant land which is held for future development or utilization by the religious organization is not deemed to be devoted exclusively to religious purposes and therefore not tax exempt.

2. Vacant land is tax exempt after construction commences or a building permit is issued for construction of a structure or other improvements used exclusively for religious purposes.

R884-24P-41. Adjustment or Deferral of Property Taxes

Pursuant to Utah Code Ann. Section 59-2-1347.

A. Requested adjustments to taxes for past years may not be made under Utah Code Ann. Section 59-2-1347 if the requested adjustment is based only on property valuation.

B. Utah Code Ann. Section 59-2-1347 applies only to taxes levied but unpaid and may not serve as the basis for refunding taxes already paid.

C. Utah Code Ann. Section 59-2-1347 may only be applied to taxes levied for the five most recent tax years except where taxes levied remain unpaid as a result of administrative action or litigation.

R884-24P-42. Farmland Assessment Audits and Personal Property Audits Pursuant to Utah Code Ann. Subsection 59-2-508(2), and Section 59-2-705.

A. The Tax Commission is responsible for auditing the administration of the Farmland Assessment Act to verify proper listing and classification of all properties assessed under the act. The Tax Commission also conducts routine audits of personal property accounts.

1. If an audit reveals an incorrect assignment of property, or an increase or decrease in value, the county assessor shall correct the assessment on the assessment roll and the tax roll.

2. A revised assessment notice or tax notice or both shall be mailed to the taxpayer for the current year and any previous years affected.

3. The appropriate tax rate for each year shall be applied when computing taxes due for previous years.

B. Assessors shall not alter results of an audit without first submitting the changes to the Tax commission for review and approval.

C. The Tax Commission shall review assessor compliance with this rule. Noncompliance may result in an order for corrective action.

R884-24P-44. Farm Machinery and Equipment Exemption Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-1101.

A. The use of the machinery and equipment, whether by the claimant or a lessee, shall determine the exemption.

1. For purposes of this rule, the term owner includes a purchaser under an installment purchase contract or capitalized lease where ownership passes to the purchaser at the end of the contract without the exercise of an option on behalf of the purchaser or seller.

B. Farm machinery and equipment is used primarily for agricultural purposes if it is used primarily for the production or harvesting of agricultural products.

C. Machinery and equipment used for processing of agricultural products or other nonproduction activities are not exempt.

R884-24P-46. Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Sections 41-1a-202, 59-2-104, 59-2-401, 59-2-402, and 59-2-405.

A. The uniform fee established in Section 59-2-405 is levied against the following classes of personal property:

1. passenger cars and light trucks;
2. motor homes;
3. street motorcycles;
4. trailers;
5. commercial trucks;
6. commercial trailers;
7. truck campers;
8. off-highway recreational vehicles;
9. motorboats and sailboats;
10. any other tangible personal property that is required by law to be registered with the state before it is used on a public highway, public waterway, or public land, and that is not specifically excluded by Section 59-2-405.

B. The following classes of personal property are not subject to the uniform fee, but remain subject to the ad valorem property tax:

1. antique vehicles;
2. interstate motor carriers;
3. mobile and manufactured homes;
4. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;
5. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles.

C. The fair market value of tangible personal property subject to the uniform fee is based on depreciated cost new as established for the following classes of property in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules," which is published annually by the Tax Commission.

1. passenger cars and light trucks;
2. motor homes;
3. street motorcycles;
4. trailers;
5. commercial trucks;
6. commercial trailers;
7. truck campers;
8. off-highway recreational vehicles;
9. motorboats and sailboats;
10. all other tangible personal property required to be registered with the state.

D. Upon proper documentation, the value used for calculating the uniform fee for personal property subject to the uniform fee and belonging to centrally assessed taxpayers shall be subtracted from the unit value of the centrally assessed property in arriving at the final assessment of the centrally assessed property not subject to the uniform fee.

E. If a property's valuation is appealed to the county board of equalization under Section 59-2-1005, the property shall become subject to a total revaluation. All adjustments are made on the basis of their effect on the property's average retail value as of the January 1 lien date and according to Tax Commission rule R884-24P-33, which is published annually by the Tax Commission.

F. The county assessor may change the fair market value of any individual vehicle in his jurisdiction for any of the following reasons:

1. The manufacturer's suggested retail price ("MSRP") was not included on the state printout, computer tape, or vehicle registration card;

2. The MSRP listed on the state records was inaccurate; or

3. In the assessor's judgment, an MSRP adjustment made as a result of a vehicle owner's informal request will continue year to year on a percentage basis.

G. If the personal property is of a type subject to annual registration, the uniform fee is due at the time the registration is due, even if the personal property is not registered at that time.

1. No additional uniform fee may be levied upon vehicles transferred during the current year and for which the uniform fee has been paid for that calendar year.

2. If the personal property is of a type registered for periods in excess of one year, the uniform fee shall be due annually.

3. The vehicle of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the uniform fee.

4. A vehicle belonging to a Utah resident member of the armed forces stationed in another state is not subject to the uniform fee as long as the vehicle is kept in the other state.

5. Noncommercial trailers weighing 750 pounds or less are not subject to the uniform fee or ad valorem property tax but may be registered at the request of the owner.

H. If the personal property is of a type subject to annual registration, registration of that personal property may not be completed unless the uniform fee has been paid, even if the taxpayer is appealing the uniform fee valuation. Delinquent fees may be assessed in accordance with Sections 59-2-217 and 59-2-309 as a condition precedent to registration.

I. The situs of personal property subject to the uniform fee is determined in accordance with Section 59-2-104.

1. For purposes of Section 59-2-405, personal property kept in a tax area other than that of the domicile of the owner for more than six months of the year shall be assessed in the other tax area.

a) If personal property is to be registered in a county other than that in which the owner is domiciled, the assessor in the county of registration shall so notify the assessor in the county of domicile. Notification shall be accomplished through the means of a form prescribed by the Tax Commission. In addition, the assessor in the county of registration must provide documentation of situs if so requested. Upon agreement by the assessor in the county of domicile, the form listing the personal property under consideration shall be forwarded to the Motor Vehicle Division.

b) If an assessor discovers personal property that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the property is kept in that county to the assessor of the county in which the personal property is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days. A copy of the affidavit shall be forwarded to the Motor Vehicle Division.

2. If the owner of personal property registered in Utah is domiciled outside of Utah, the taxable situs of the property is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor a list of all personal property subject to state registration and its corresponding taxable situs.

J. The veteran's and blind exemptions provided in Sections 59-2-1104, 59-2-1105, and 59-2-1106 are applicable to the uniform fee.

K. The provisions of this rule refer to the property tax year beginning January 1, 1992 and each succeeding year.

R884-24P-47. Uniform Tax on Aircraft Pursuant to Utah Code Ann. Sections 59-2-404, 59-2-1005, 59-2-1302, and 59-2-1303.

A. Registration of aircraft requires payment of a uniform tax in lieu of ad valorem personal property tax. This tax shall be collected by the county assessor at the time of registration at the rate prescribed in Section 59-2-404.

B. The average wholesale market value of the aircraft is the arithmetic mean of the average low wholesale book value and the average high wholesale book value. This average price will be used as the basis for the initial assessment. These amounts are obtained from the fall edition of the Aircraft Bluebook Price Digest in the year preceding the year of registration for all aircraft listed in that publication.

1. The average wholesale market value of aircraft subject to registration but not shown in the Aircraft Bluebook Price Digest will be assessed according to the annual depreciation schedule for aircraft valuation set forth in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules."

2. Instructions for interpretation of codes are found inside the Aircraft Bluebook Price Digest.

a) Average low wholesale values are found under the heading "Average equipped per base avg change/invtry."

b) Average high wholesale values are found under the heading "change mktbl."

c) Aircraft values not in accordance with "average" may be adjusted by the assessor following the instructions in the Bluebook. Factors that have the greatest impact on value include: high engine time, air worthiness directives not complied with, status of annual inspection, crash damage, paint condition, and interior condition.

C. The uniform tax is due each year the aircraft is registered in Utah. If the aircraft is sold within the same registration period, no additional uniform tax shall be due. However, the purchaser shall pay any delinquent tax as a condition precedent to registration.

D. If an aircraft is purchased or moved to Utah during the year and newly registered in Utah, the uniform tax shall be prorated based on the number of months remaining in the registration period.

1. Any portion of a month shall be counted as a full month. For example, if registration is required during July, 50 percent of the uniform tax shall be paid as a condition of registration.

2. If the aircraft is moved to Utah during the year, and property tax was paid to another state prior to moving the aircraft into Utah, any property tax paid shall be allowed as a credit against the prorated uniform tax due in Utah.

a) This credit may not be refunded if the other state property tax exceeds the uniform tax due in Utah for the comparable year.

b) Proof of payment shall be submitted before credit is allowed.

E. The uniform tax collected by county assessors shall be distributed to the taxing districts of the county in which the aircraft is located as shown on the registration application. If the aircraft is registered in a county other than the county of the aircraft location, the tax collected shall be forwarded to the appropriate county within five working days.

F. The Tax Commission shall supply registration forms and numbered decals to the county assessors. Forms to assess the uniform tax shall be prepared by the counties each year. The Tax Commission shall maintain an owners' data base and supply the counties with a list of registrations by county after the first year and shall also supply registration renewal forms preprinted with the prior year's registration information.

G. The aircraft owner or person or entity in possession thereof shall immediately provide access to any aircraft hangar or other storage area or facility upon request by the assessor or the assessor's designee in order to permit the determination of the status of registration of the aircraft, and the performance of any other act in furtherance of the assessor's duties.

H. The provisions applicable to securing or collecting personal property taxes set forth in Sections 59-2-1302 and 59-2-1303 shall apply to the collection of delinquent uniform taxes.

I. If the aircraft owner and the county assessor cannot reach agreement concerning the aircraft valuation, the valuation may be appealed to the county board of equalization under Section 59-2-1005.

R884-24P-49. Calculating the Utah Apportioned Value of a Private Rail Car Company Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Average market value per rail car" means the total rail car market value divided by the total number of rail cars in the rail car company's fleet.

2. "Total rail car market value" means the sum of the acquisition cost by year for rail cars purchased by the rail car company multiplied by the appropriate percent good factors contained in Class 10 of R884-24P-33, Personal Valuation Guides and Schedules, plus the sum of betterments by year depreciated on a 14-year straight line method.

3. "Total system car miles" means both loaded and empty miles accumulated during the prior calendar year by all the rail cars in the rail company's fleet.

4. "Utah car miles" mean both loaded and empty miles accumulated within Utah during the prior calendar year by all the rail cars in the rail company's fleet.

5. "Utah percent of the system factor" means the Utah car miles divided by the total system car miles.

B. The taxable value of a private rail car company apportioned to Utah, for which the Utah percent of system factor is more than 50 percent, shall be determined by multiplying the Utah percent of system factor by the total rail car market value.

C. The taxable value of a private rail car company apportioned to Utah, for which the Utah percent of system factor is less than or equal to 50 percent, shall be determined in the following manner:

1. Calculate the number of rail cars allocated to Utah under the percent of system factor.

a) Multiply the Utah percent of system factor by the total number of in-service rail cars in the company's fleet.

b) Multiply the product obtained in C.1.a) by 50 percent.

2. Calculate the number of rail cars allocated to Utah under the time speed factor.

a) Divide Utah car miles by the average rail car miles traveled in Utah per year. The Commission has determined that the average rail car miles traveled in Utah per year shall equal 200,000 miles.

b) Multiply the quotient obtained in C.2.a) by the percent of in-service rail cars in the company's fleet.

c) Multiply the product obtained in C.2.b) by 50 percent.

3. Add the number of rail cars allocated to Utah under the percent of system factor, calculated in C.1.b), and the number of rail cars allocated to Utah under the time speed factor, calculated in C.2.c), and multiply that sum by the average market value per rail car.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1997.

R884-24P-50. Apportioning the Utah Proportion of Commercial Aircraft Valuations Pursuant to Utah Code Ann. Subsection 59-2-201(1)(c) and Section 59-2-801.

A. Definitions.

1. "Commercial air carrier" means any air charter service, air contract service or airline as defined by Section 59-2-102.

2. "Mobile flight equipment" means the airframes, engines, and other personal property owned or operated by a commercial air carrier that are capable of flight or used as part of an aircraft capable of flight. Engines or spare parts that are not currently attached to an airframe or otherwise part of an aircraft are not part of the mobile flight equipment.

3. "Route" means the flight path, including landings and takeoffs, over the ground or water that a commercial air carrier's mobile flight equipment typically flies as determined by the Property Tax Division.

4. "Route miles" means the lineal ground distance in statute miles along a commercial air carrier's route as determined by the Property Tax Division.

5. "Designated taxing areas" means those taxing areas within a school district other than incorporated cities or towns. If, however, a school district's boundaries coincide with the boundaries of an incorporated city or town, the incorporated city or town shall be included in the designated taxing area.

B. The commission shall apportion the Utah portion of each commercial air carrier's mobile flight equipment valuation to the appropriate designated taxing areas. A designated taxing area's apportionment is determined by the proportion of route miles in that area compared to the total route miles within the state.

C. The valuation of a commercial air carrier's other personal and real property shall be allocated to the taxing area in which it is located on January 1 of each year.

R884-24P-52. Criteria for Determining Primary Residence Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-103.

A. "Household" is as defined in Section 59-2-1202.

B. "Primary residence" is defined as the location where domicile has been established.

C. Except as provided in D., the residential exemption

provided under Section 59-2-103 is limited to one primary residence per household.

D. An owner of multiple properties may receive the residential exemption on all properties for which the property is the primary residence of the tenant.

E. Factors or objective evidence determinative of domicile include:

1. whether or not the individual voted in the place he claims to be domiciled;

2. the length of any continuous residency in the location claimed as domicile;

3. the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;

4. the presence of family members in a given location;

5. the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;

6. the physical location of the individual's place of business or sources of income;

7. the use of local bank facilities or foreign bank institutions;

8. the location of registration of vehicles, boats, and RVs;

9. membership in clubs, churches, and other social organizations;

10. the addresses used by the individual on such things as:

a) telephone listings;

b) mail;

c) state and federal tax returns;

d) listings in official government publications or other correspondence;

e) driver's license;

f) voter registration; and

g) tax rolls;

11. location of public schools attended by the individual or the individual's dependents;

12. the nature and payment of taxes in other states;

13. declarations of the individual:

a) communicated to third parties;

b) contained in deeds;

c) contained in insurance policies;

d) contained in wills;

e) contained in letters;

f) contained in registers;

g) contained in mortgages; and

h) contained in leases.

14. the exercise of civil or political rights in a given location;

15. any failure to obtain permits and licenses normally required of a resident;

16. the purchase of a burial plot in a particular location;

17. the acquisition of a new residence in a different location.

R884-24P-53. 1998 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515.

A. Each year the Property Tax Division shall update and publish schedules to determine the taxable value for land subject to the Farmland Assessment Act on a per acre basis.

1. The schedules shall be based on the productivity of the various types of agricultural land as determined through crop budgets and net rents.

2. Proposed schedules shall be transmitted by the Property Tax Division to county assessors for comment before adoption.

3. County assessors may not deviate from the schedules.

B. All property defined as farmland pursuant to Section 59-2-501 shall be assessed on a per acre basis as follows:

1. Irrigated farmland shall be assessed under the following classifications.

a) Irrigated I. The following counties shall assess Irrigated I property based upon the per acre values listed below:

TABLE 1
Irrigated I

1)	Box Elder	675
2)	Cache	600
3)	Carbon	525
4)	Davis	750
5)	Emery	450
6)	Iron	625
7)	Kane	350
8)	Millard	700
9)	Salt Lake	700
10)	Utah	625
11)	Washington	650
12)	Weber	725

(Note: Some counties do not have Irrigated I property.)

b) Irrigated II. The following counties shall assess Irrigated II property based upon the per acre values listed below:

TABLE 2
Irrigated II

1)	Box Elder	575
2)	Cache	500
3)	Carbon	400
4)	Davis	650
5)	Duchesne	375
6)	Emery	350
7)	Grand	400
8)	Iron	525
9)	Juab	375
10)	Kane	200
11)	Millard	600
12)	Salt Lake	550
13)	Sanpete	475
14)	Sevier	525
15)	Summit	375
16)	Tooele	450
17)	Utah	475
18)	Wasatch	400
19)	Washington	550
20)	Weber	625

(Note: Some counties do not have Irrigated II property.)

c) Irrigated III. The following counties shall assess Irrigated III property based upon the per acre values listed below:

TABLE 3
Irrigated III

1)	Beaver	375
2)	Box Elder	425
3)	Cache	350
4)	Carbon	250
5)	Davis	450
6)	Duchesne	275
7)	Emery	200

8)	Garfield	150
9)	Grand	250
10)	Iron	375
11)	Juab	225
12)	Kane	150
13)	Millard	400
14)	Morgan	325
15)	Piute	350
16)	Rich	225
17)	Salt Lake	350
18)	San Juan	200
19)	Sanpete	325
20)	Sevier	375
21)	Summit	250
22)	Tooele	275
23)	Uintah	300
24)	Utah	375
25)	Wasatch	250
26)	Washington	350
27)	Wayne	200
28)	Weber	425

(Note: Daggett County does not have Irrigated III property.)

d) Irrigated IV. The following counties shall assess Irrigated IV property based upon the per acre values listed below:

TABLE 4
Irrigated IV

1)	Beaver	275
2)	Box Elder	325
3)	Cache	250
4)	Carbon	125
5)	Daggett	200
6)	Davis	300
7)	Duchesne	175
8)	Emery	100
9)	Garfield	75
10)	Grand	150
11)	Iron	225
12)	Juab	150
13)	Kane	75
14)	Millard	300
15)	Morgan	225
16)	Piute	250
17)	Rich	150
18)	Salt Lake	200
19)	San Juan	50
20)	Sanpete	225
21)	Sevier	275
22)	Summit	150
23)	Tooele	125
24)	Uintah	150
25)	Utah	225
26)	Wasatch	175
27)	Washington	250
28)	Wayne	100
29)	Weber	325

2. Fruit orchards shall be assessed per acre based upon the following schedule:

TABLE 5
Fruit Orchards

a)	Box Elder	560
b)	Cache	650
c)	Davis	630
d)	Utah	510
e)	Washington	755
f)	Weber	605
g)	All other counties	580

3. Meadow IV property shall be assessed per acre based upon the following schedule:

TABLE 6
Meadow IV

1)	Beaver	160
2)	Box Elder	165
3)	Cache	210
4)	Carbon	115
5)	Daggett	140
6)	Davis	210
7)	Duchesne	140
8)	Emery	115
9)	Garfield	110
10)	Grand	110
11)	Iron	160
12)	Juab	115
13)	Kane	110
14)	Millard	115
15)	Morgan	140
16)	Piute	135
17)	Rich	115
18)	Salt Lake	165
19)	Sanpete	165
20)	Sevier	165
21)	Summit	165
22)	Tooele	165
23)	Uintah	140
24)	Utah	165
25)	Wasatch	165
26)	Washington	160
27)	Wayne	135
28)	Weber	210

(San Juan county does not have any Meadow IV property.)

4. Dry land shall be classified as one of the following two categories and shall be assessed on a per acre basis as follows:

a) Dry III. The following counties shall assess Dry III property based upon the per acre values listed below:

TABLE 7
Dry III

1)	Beaver	90
2)	Box Elder	125
3)	Cache	250
4)	Carbon	90
5)	Daggett	90
6)	Davis	180
7)	Duchesne	125
8)	Emery	100
9)	Garfield	90
10)	Grand	90
11)	Iron	130
12)	Juab	135
13)	Kane	90
14)	Millard	160
15)	Morgan	250
16)	Piute	90
17)	Rich	165
18)	Salt Lake	110
19)	San Juan	60
20)	Sanpete	120
21)	Sevier	100
22)	Summit	100
23)	Tooele	125
24)	Uintah	140
25)	Utah	100
26)	Wasatch	100
27)	Washington	80
28)	Wayne	100
29)	Weber	225

a) Dry IV. The following counties shall assess Dry IV property based upon the per acre values listed below:

TABLE 8
Dry IV

1)	Beaver	55

2)	Box Elder	90
3)	Cache	215
4)	Carbon	55
5)	Daggett	55
6)	Davis	145
7)	Duchesne	90
8)	Emery	65
9)	Garfield	55
10)	Grand	55
11)	Iron	95
12)	Juab	100
13)	Kane	55
14)	Millard	125
15)	Morgan	215
16)	Piute	55
17)	Rich	130
18)	Salt Lake	75
19)	San Juan	25
20)	Sanpete	85
21)	Sevier	65
22)	Summit	65
23)	Tooele	90
24)	Uintah	105
25)	Utah	65
26)	Wasatch	65
27)	Washington	45
28)	Wayne	65
29)	Weber	190

5. Grazing land shall be classified as one of the following four categories and shall be assessed on a per acre basis as follows:

TABLE 9
Grazing Land

a)	Graze I	
	1) All Counties	40
b)	Graze II	
	2) All Counties	12
c)	Graze III	
	3) All Counties	8
d)	Graze IV	
	4) All Counties	4

6. Land classified as nonproductive shall be assessed as follows on a per acre basis:

TABLE 10
Nonproductive Land

a)	Nonproductive Land	
	1) All Counties	4

R884-24P-55. Counties to Establish Ordinance for Tax Sale Procedures Pursuant to Utah Code Ann. Section 59-2-1351.1.

A. "Collusive bidding" means any agreement or understanding reached by two or more parties that in any way alters the bids the parties would otherwise offer absent the agreement or understanding.

B. Each county shall establish a written ordinance for real property tax sale procedures.

C. The written ordinance required under B. shall be displayed in a public place and shall be available to all interested parties.

D. The tax sale ordinance shall address, as a minimum, the following issues:

1. bidder registration procedures;
2. redemption rights and procedures;
3. prohibition of collusive bidding;
4. conflict of interest prohibitions and disclosure requirements;
5. criteria for accepting or rejecting bids;
6. sale ratification procedures;
7. criteria for granting bidder preference;
8. procedures for recording tax deeds;
9. payments methods and procedures;
10. procedures for contesting bids and sales;
11. criteria for striking properties to the county;
12. procedures for disclosing properties withdrawn from the sale for reasons other than redemption; and
13. disclaimers by the county with respect to sale procedures and actions.

R884-24P-56. Assessment, Collection, and Apportionment of Property Tax on Commercial Transportation Property Pursuant to Utah Code Ann. Sections 41-1a-301, and 59-2-801.

A. For purposes of Section 59-2-801, the previous year's statewide rate shall be calculated as follows:

1. Each county's overall tax rate is multiplied by the county's percent of total lane miles of principal routes.

2. The values obtained in A.1. for each county are summed to arrive at the statewide rate.

B. The assessment of vehicles apportioned under Section 41-1a-301 shall be apportioned at the same percentage ratio that has been filed with the Customer Service Division of the State Tax Commission for determining the proration of registration fees.

C. For purposes of Section 59-2-801(3)

"Principal route:" means lane miles of interstate highways and clover leafs, U.S. highways, and state highways extending through each county as determined by the Commission from current state Geographic Information System databases.

R884-24P-57. Judgment Levies Pursuant to Utah Code Ann. Section 59-2-1328.

A. A judgment levy imposed on or after January 1, 1997, is exempt from the requirements of Sections 59-2-918 and 59-2-919, regardless of when the judgment underlying that levy was entered.

R884-24P-58. One-Time Decrease in Certified Rate Based on Estimated County Option Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated sales tax revenue to be distributed to a county under Section 59-12-1102 shall be determined based on the following formula:

1. sharedown of the state econometric model based on historic patterns, weighted 40 percent;
2. time series models, weighted 40 percent; and
3. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Title 59, Chapter 12, Part 11, County Option Sales and Use Tax, weighted 20 percent.

R884-24P-59. One-Time Decrease in Certified Rate Based on Estimated Additional Resort Communities Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated additional resort communities sales tax

revenue to be distributed to a municipality under Section 59-12-402 shall be determined based on the following formula:

1. time series or judgmental model, based upon the availability of data, weighted 75 percent; and

2. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Section 59-12-402, weighted 25 percent.

KEY: taxation, personal property, property tax, appraisal
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11-13-25
41-1a-202
41-1a-301
59-1-1
59-1-210
59-2-13
59-2-102
59-2-103
59-2-104
59-2-201
59-2-210
59-2-211
59-2-219
59-2-301
59-2-302
59-2-303
59-2-305
59-2-306
59-2-401
59-2-402
59-2-404
59-2-405
59-2-501 through 59-2-515
59-2-701
59-2-702
59-2-703
59-2-704
59-2-705
59-2-801
59-2-918 through 59-2-924
59-2-1002
59-2-1005
59-2-1101
59-2-1107 through 59-2-1109
59-2-1113
59-2-1202
59-2-1202(5)
59-2-1302
59-2-1303
59-2-1328
59-2-1317
59-2-1347
59-2-1351
59-3-1
59-5-1
59-5-501 through 59-5-515
63-18A-1 through 63-18A-6

R909. Transportation, Motor Carrier.
R909-1. Safety Regulations for Motor Carriers.
R909-1-1. Adoption of Federal Regulations.

A. Safety Regulations for Motor Carriers, 49 CFR Parts 350 through the end of part 399, and their amendments as of September 1, 1997, in the October 1, 1996 Edition as printed in the Regulations Management Corporation Service, are incorporated by reference, except for parts 395.1(l), 395.1(m), 395.1(n) and 395.1(o). This applies to all motor carrier(s) as defined in CFR Title 49 Part 390.5 engaged in Interstate and/or Intrastate Commerce.

B. In the instance of a driver who is used primarily in the transportation of construction materials and equipment, as defined under 395.2, to and from an active construction site, any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 36 or more successive hours.

KEY: trucks, transportation safety

January 15, 1998	**27-17-103**
Notice of Continuation March 31, 1997	**27-17-104**
	54-6-9
	63-49-4

R909. Transportation, Motor Carrier.
R909-75. Safety Regulations for Motor Carriers Transporting Hazardous Materials and/or Hazardous Wastes.
R909-75-1. Adoption of Federal Regulations.

Safety Regulations for Motor Carriers Transporting Hazardous Materials and/or Hazardous Wastes, 49 CFR, Sub-Chapter C, of the December 1, 1997, edition as printed in the Regulations Management Corporation Service, are incorporated by reference. This applies to all private, common, and contract carriers by highway in interstate and/or intrastate commerce.

KEY: hazardous materials transportation, hazardous substances, hazardous waste, safety regulation

December 15, 1997	**27-17-103**
Notice of Continuation April 22, 1997	**27-17-104**

R912. Transportation, Motor Carrier, Ports-of-Entry.
R912-4. Limitation of Special Permit Vehicles in Provo Canyon. Legal and Permitted Vehicles.
R912-4-1. Exception to R912-1-5(1)(3).

An exception to the Utah Regulations for Legal and Permitted Vehicles for operators, drivers and enforcement officers, forbids issuance of special permits in all classes for the operation of oversize or overweight vehicles along US-189 between Wallsburg Junction in Wasatch County and Olmstead in Utah County. These restrictions shall not apply to vehicles engaged in public works projects transporting materials to or from said projects located between the Wallsburg Junction and Olmstead.

KEY: permits, safety regulation, oversize/overweight trucks*
1987 27-12-7
Notice of Continuation January 12, 1998 27-12-145 through 157
63-49-12

R918. Transportation, Operations, Maintenance.
R918-2. Widening Pavement to Curb and Gutter.
R918-2-1. Length.

Each project for widening the pavement of state highways from the edge of the existing pavement to the edge of the curb and gutter must have a length of 500 continuous feet or more.

R918-2-2. Exception.

Exceptions to the minimum length may be approved on an individual basis by the region director. In the event that a continuous length of less than 500 feet is submitted for review and approval, the following factors shall be considered in deciding if the request is in the public interest:

A. The length of curb and gutter is an extension to an already widened section that extends an existing section controlled by curb and gutter.

B. The proposed section meets all the criteria listed in R918-2-3.

C. The proposed section is not isolated and is a part of an existing planned widening of the street.

D. The expenditure for widening will promote an immediate public benefit other than an incremental part of an eventual widening that is not on any fixed time schedule.

E. The amount of widening is large enough to be economically feasible in the use of equipment, materials, and manpower.

R918-2-3. Criteria.

If the following criteria are met, the UDOT may authorize and pay for the widening of the pavement from the edge of the existing pavement to the edge of the curb and gutter, provided funds are available.

A. New curb and gutter will be installed by others in accordance with specifications established by the local government and approved by the UDOT. A permit issued by the UDOT prior to commencement of construction is required.

B. New curb and gutter must maintain continuity of drainage with existing or planned drainage facilities and include all necessary drop inlets, storm drains, storm drain connections, driveway approaches, handicap ramps, and any other necessary appertaining features.

C. Utility adjustment, relocation, and removal where necessary, will be required in accordance with UDOT rules.

D. If private right-of-way is required for the new curb, gutter, and sidewalk, a right-of-way of sufficient width to accommodate roadside features must be provided by others at no cost to UDOT.

E. Work performed by others within the existing right-of-way will be subject to permit fees and bonding requirements as described in Utah Department of Transportation Policy 08A6-2, Accommodation of Utilities on Highway Right-of-Way.

F. Untreated base course of a predetermined design thickness in place shall also be required of the project sponsor.

R918-2-4. Authority.

Authorization for widening projects may be granted when the criteria are met in accordance with Section 63-49-12.

KEY: drainage, highway construction

1993 63-49-4
Notice of Continuation June 26, 1997 27-12-7
27-12-104
27-12-107

R986. Workforce Services, Employment Development.
R986-302. Eligibility Requirements.
R986-302-201. Citizenship and Alienage.

1. The department adopts 42 CFR 435.406(a)(1), 1995 ed., which is incorporated by reference. The department adopts Section 1137 and Subsection 1903(v) of the Compilation of the Social Security Laws, 1995 ed., U.S. Government Printing Office, Washington, D.C., which is incorporated by reference. The department adopts Public Law 104-193 (401) through (403), (411), (412), (421) through (423), (431), and (435), as amended by Pub. L. 105-33(5302)(b) and (c), (5303), (5305)(b), (5306), (5562), (5563), and (5571) which are incorporated by reference. The department adopts Pub. L. 105-33(5307)(a) and (5566) which are incorporated by reference.

2. Current department practices:

a. The director or designee shall decide if a public or private organization no longer exists or is unable to meet an alien's needs. The decision shall be based on the evidence submitted to support the claim. The documentation submitted by the alien must be sufficient to prove the claim.

b. One adult household member must declare the citizenship status of all household members who will receive Medicaid. The client must provide verification of citizenship.

c. A qualified alien, as defined in Pub. L. No. 104-193 (431) as amended by Pub. L. 105-33(5302)(c)(3), (5562), and (5571), admitted into the United States prior to August 22, 1996, may receive full Medicaid, QMB, SLMB, or Qualifying Individuals (QI) services.

d. A qualified alien, as defined in Pub. L. No. 104-193 (431) as amended by Pub. L. 105-33(5302)(c)(3), (5562), and (5571), newly admitted into the United States on or after August 22, 1996, may receive full Medicaid, QMB, SLMB, or Qualifying Individuals (QI) services after five years have passed from the person's date of entry into the United States.

R986-302-202. Utah Residence.

The department adopts 42 CFR 435.403, 1994 ed., which is incorporated by reference. The department adopts Subsection 1902(b) of the Compilation of the Social Security Laws, 1993 ed., U.S. Government Printing Office, Washington, D.C., which is incorporated by reference.

R986-302-203. Local Office Residence.

Applicants shall apply at the local office in the area where they reside. Residence for foster care cases shall be the same area as that of the Division of Child and Family Services (DCFS) worker assigned to the case.

R986-302-204. Residents of Institutions.

1. The department adopts 20 CFR 416.201 and 416.211, 1994 ed. and 42 CFR 435.1008, 1994 ed., which are incorporated by reference.

2. Current department practices:

a. Persons in the custody of the criminal justice system are not eligible for Medicaid.

b. Persons under the age of 18 are not considered to be residents of an institution if they are living temporarily in the institution while arrangements are being made for other placement.

c. An individual who resides in a temporary shelter for a limited period of time is not considered a resident of an institution.

d. Ineligible residents of institutions for mental disease shall be considered non-residents while on conditional or convalescent leave from the institution.

e. Residents of any institution primarily engaged in the diagnosis, treatment or care of persons with tuberculosis are not eligible for Medicaid.

R986-302-205. Social Security Numbers.

1. The department adopts 42 CFR 435.910, 1994 ed., which is incorporated by reference. The department adopts Section 1137 of the Compilation of the Social Security Laws, 1993 ed., U.S. Government Printing Office, Washington, D.C., which is incorporated by reference.

2. Current department practices:

a. Clients must provide their correct Social Security Number (SSN).

i. Clients are required to provide their correct SSN or a proof of application for a SSN at the time of application for Medicaid.

ii. Clients who do not know their SSN or provide a SSN that is questionable are required to provide proof of application for a SSN upon application for Medicaid.

iii. Acceptable proof of application for a SSN is a Social Security Card, an official document from Social Security which identifies the correct number or a Social Security receipt form 5028, 2880, or 2853.

iv. A new proof of application for a SSN is required at each recertification if the SSN has not been provided previously.

R986-302-206. Application for Other Possible Benefits.

The department adopts 42 CFR 435.608, 1994 ed., which is incorporated by reference.

R986-302-207. Third Party Liability.

1. The department adopts 42 CFR 433.138(b) and 435.610, 1994 ed., and Section 1915(b) of the Compilation of the Social Security Laws, 1993 ed., which are incorporated by reference.

2. Current department practices:

a. Clients are required to report any changes in third party liability information within 30 days.

b. A client shall be considered noncooperative if the client knowingly withholds third party liability information.

c. The Department of Health, Division of Health Care Financing, shall decide whether employer provided group health insurance would be cost effective for the state to purchase as a benefit of Medicaid.

d. Clients residing in selected communities will be required to be enrolled in a Health Maintenance Organization as their primary care provider. Clients who do not make a selection will be enrolled in a Health Maintenance Organization that the Department selects. Clients will be notified of the Health Maintenance Organization that they will be enrolled in and allowed 10 days to contact the Department with a different selection. If the client fails to notify the Department to make a different selection within 10 days, the enrollment will become

effective for the next benefit month.

R986-302-208. Medical Support Enforcement.

The department adopts 42 CFR 433.145 through 433.148, 1994 ed., which is incorporated by reference.

R986-302-209. Relationship Determination for Family Medicaid.

The department adopts 42 CFR 435.602(a), 1994 ed., which is incorporated by reference. The department requires compliance with Subsections 30-1-4.5 and 78-45-4.1.

R986-302-210. Strikers - Family Medicaid.

The department adopts 45 CFR 233.106, 1994 ed., which is incorporated by reference.

KEY: benefits, income
January 2, 1998 26-18

R986. Workforce Services, Employment Development.
R986-412. Conditions of Eligibility.
R986-412-202. Citizenship and Alienage.

The department adopts 7 CFR 273.4, 1992 ed. and Pub. L. No. 104-193, Sections 401, 402, 403, 431, and 435, which are incorporated by reference.

1. Only qualified aliens may be eligible for food stamps. The qualified aliens are:

a. Refugees admitted under section 207 of the Immigration and Nationality Act (INA).

b. Asylees admitted under Section 208 of the INA.

c. Aliens whose deportation is withheld under Section 243(h) and Section 241(b)(3) of the INA.

d. Parolees under Section 212(d)(5) of the INA, if paroled for at least one year.

e. Conditional entrants under Section 203(a)(7) of the INA.

f. Cuban/Haitian entrants under Section 501(e) of the Refugee Education Assistance Act of 1980.

g. Amerasian admitted under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, and amended by the 9th proviso under MIGRATION AND REFUGEE ASSISTANCE in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989.

h. Permanent residents.

2. Qualified Aliens are eligible for food stamps only if they meet one of the following eligible alien categories:

a. Refugees admitted under Section 207 of the Immigration and Nationality Act (INA), asylees admitted under Section 208 of the INA, aliens whose deportation has been withheld under Section 243(h) of the INA, Cuban/Haitians as defined in Section 501(e) of the Refugee Education Assistance Act of 1980, Amerasian admitted under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, and amended by the 9th proviso under MIGRATION AND REFUGEE ASSISTANCE in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989 are eligible for 5 years from the date they obtained the status.

b. Veterans with honorable discharges, their spouses and dependent children.

c. Active duty personnel, their spouses and dependent children.

d. Aliens, their spouses and dependent children, with 40 qualifying quarters of work,as established through the methodology used by the Social Security Administration.

R986-412-204. Residency.

The department adopts 7 CFR 273.3, 1992 ed. which is incorporated by reference. The department shall require compliance with Section 62A-9-115.

1. Current Department Practices

a. A household must live in the local area in which they apply.

b. Moving from a local office area will terminate eligibility in that area.

R986-412-206. Household Composition.

The department adopts 7 CFR 273.1(a), 1996 ed. and The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Title VIII, Section 803, which is incorporated by reference.

1. Current Department Practices

a. Household status for family members who live in the same structure is determined on a case by case basis. It is based on the sharing of common facilities within that structure.

b. Children under 22 years of age living with a parent cannot be a separate food stamp household.

R986-412-208. Ineligible/Non-Household Members.

The department adopts 7 CFR 273.1(b) and 7 CFR 273.11(c), 1992 ed. which are incorporated by reference.

R986-412-210. Residents of Institutions.

The department adopts 7 CFR 273.1(e) and 7 CFR 273.11(e) through (h), 1992 ed. which are incorporated by reference.

1. Current Department Practices

a. Residents of institutions are approved based on living arrangements, food preparation arrangements, and the use of authorized representatives.

b. Homeless persons who are temporary residents in a public or private non-profit shelter for the homeless are not considered residents of an institution.

R986-412-212. Student Participation.

The department adopts 7 CFR 273.5, 1992 ed. which is incorporated by reference.

R986-412-214. Strikers.

The department adopts 7 CFR 273.1(g), 1992 ed. which is incorporated by reference.

R986-412-216. Boarders.

The department adopts 7 CFR 273.1(c) and 7 CFR 273.11(b), 1992 ed. which are incorporated by reference.

1. Current Department Practices

a. Residents of commercial houses are not eligible for Food Stamps.

b. A resident of a commercial house who does not pay a reasonable amount for meals is not a boarder. He is a member of the household.

c. A boarder may choose to be included as a household member or be a non-household member.

R986-412-218. Public Assistance Household/Categorically Eligible.

The department adopts 7 CFR 273.2(j) and 273.9(a), 1992 ed. which are incorporated by reference.

1. The following definition applies to this section:

a. "Categorically eligible" means those assistance units who receive financial assistance from Aid for Families with Dependent Children (AFDC), General Assistance (GA) or Supplemental Security Income (SSI).

2. Current Department Practices

a. Refugees receiving financial assistance are not categorically eligible.

b. Categorically eligible households do not have to provide verification of assets, Social Security Numbers, sponsored alien, and residency.

c. Categorically eligible households do not have to pass the gross or net income tests.

R986-412-220. SSI/Elderly Cash-Out.

The department adopts 7 CFR 282.12, 1992 ED. which is incorporated by reference.

1. Current Department Practices

a. A client who is eligible for a cash-out check may choose to use either the cash out check or the food coupons. That client may choose to change the form of benefit at any time.

R986-412-222. Shelters for Battered Women and Children.

The department adopts 7 CFR 273.1(e) and 7 CFR 273.11(g), 1992 ed. which are incorporated by reference.

R986-412-224. Sponsored Aliens.

The department adopts 7 CFR 273.11(i), 1992 ed. and The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Title VIII, Section 421, which is incorporated by reference.

1. The full amount of income of sponsors are counted until the alien becomes a US citizen or has worked 40 qualifying quarters of Social Security coverage.

R986-412-226. Head of Household.

The department adopts 7 CFR 273.1(d), 1992 ed. which is incorporated by reference.

R986-412-228. Authorized Representatives.

The department adopts 7 CFR 274.5 and 7 CFR 273.11(e), (f), (g) and (h), 1992 ed. which are incorporated by reference.

1. Current Department Practices

a. The eligibility worker shall insure that an institutional facility is on the approved list before residents or authorized representatives in that facility are approved for food stamps.

b. The facility shall give a change report form to a client when he leaves the facility and tell the person to return it to the local office.

c. The facility shall notify the district office when a client leaves the facility.

R986-412-230. Duplicate Participation.

The department adopts 7 CFR 273.3, 1992 ed. which is incorporated by reference.

R986-412-232. Social Security Numbers.

The department adopts 7 CFR 273.6 and 7 CFR 273.2 (f)(1)(v), 1992 ed. which is incorporated by reference.

1. Current Department Practices

a. The client must provide a Social Security number for all household members. If the client knows the number, he can verbally provide the number. The client can also submit a Social Security Card, an official document from Social Security containing the Social Security Number, or a receipt form 5028 or 2088 from Social Security showing they have applied for a Social Security Number.

b. Applicants who are eligible for expedited service may receive the first allotment before they apply for or provide their Social Security Number.

c. Clients may apply for a Social Security Number on their own or through the local office.

d. If the client applies through the enumeration system, there is nothing more he needs to do once he has verified he has applied for a Social Security Number.

e. At recertification, if the social security number has not been verified and there is no social security card in the case record, the client must provide his social security number or another receipt showing reapplication for the number.

f. If a client has good cause for not applying for a social security number, he may get food stamps for the month of application and one additional month. Then he is removed from the case until an application for a social security number has been completed.

R986-412-234. Felon and Probation Parole Violators.

The department adopts P. L. 104-193, Section 821, which is incorporated by reference.

KEY: social security
January 2, 1998 62A-9-105
Notice of Continuation February 10, 1997

R986. Workforce Services, Employment Development.
R986-414. Income.
R986-414-402. Incorporation by Reference.

The department adopts 7 CFR 273.1(c), 273.11(a), (b), and (j), 1995 edition which are incorporated by reference.

R986-414-404. Unearned Income.

The department adopts 7 CFR 273.9(b)(2) through (4), 1995 edition which are incorporated by reference.

1. Current Department Practices

a. Initial Public Assistance payments are not counted as income if paid after the initial Food Stamp issuance.

b. The following are reimbursements and are not counted as income:

i. Work Experience and Training (WEAT) allowances

ii. Emergency Work Program (EWP) work expense allowances

iii. Aid to Families with Dependent Children (AFDC) special needs day care allowance

R986-414-406. Earned Income.

The department adopts 7 CFR 273.9(b)(1), 1995 edition which is incorporated by reference.

R986-414-408. Income Exclusions.

The department adopts 7 CFR 273.9(b)(5) and 7 CFR 273.9(c) and 7 CFR 273.21(j)(1)(vii)(B)(2), 1995 edition and The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Title VIII, Section 807, which are incorporated by reference.

1. Current Department Practices

a. Allocated tips as reported by the employer to IRS are excluded. Only actual tips received are counted as income.

R986-414-410. Income Deductions.

The department adopts 7 CFR 273.9(d) and 7 CFR 273.11(c) and (d), 1995 edition and P.L. 104-193, Sec. 809.

1. Current Department Practices

a. The State uses the single Standard Utility Allowance (SUA) option.

b. The telephone allowance is the same whether the client chooses actual utility costs or the SUA.

c. The State uses an annualized SUA for households with a heating or cooling cost.

d. The SUA is $150.

e. The standard deduction is $134.

f. The maximum shelter deduction is $250 for households with no elderly or disabled household member.

g. The standard homeless shelter deduction is $143. For the purposes of qualifying for this deduction, an individual residing in the home of another person is considered homeless if the living arrangement is expected to last 90 days or less.

h. Amounts paid for legally obligated child support to or for non household members.

R986-414-412. Budgeting and Benefit Levels.

The department adopts 7 CFR 273.10 and 7 CFR 273.12, 1995 edition, which are incorporated by reference.

1. Current department practice:

a. Prospective budgeting is used to determine eligibility and benefits.

R986-414-414. Change Reporting.

The department adopts 7 CFR 273.12, 1995 edition, which is incorporated by reference.

1. Current Departmental Practices:

a. After determining that a client is prospectively eligible for benefits, adjustments that result from changes reported during any given month will be made effective the first day of the following month.

i. The client is responsible to report any change to the agency within ten calendar days of the day the client learns of a change. The agency has ten calendar days following the report of a change to take action on the report. The agency is required to advise the client of an adverse change in a benefit amount at least ten days prior to the end of the month in which the action is taken.

ii. If the reported change results in an increase in the client's benefit, the increased benefit will not be granted sooner than the first day of the month following the date of report. After the client has reported a change, the client must submit verification of the reported change within ten days of when the change was initially reported. The date of the change in the client's benefit will be calculated from the initial report, provided the change is verified within ten calendar days. The date of change in income will be calculated from the date of verification if the client verifies the change later than ten days after the initial report.

iii. If the reported change results in a decrease in the clients benefit, the decreased benefit may be imposed as soon as the first day of the following month. If the agency cannot provide adequate ten day notice of adverse action before the end of that month, the decrease in the client's benefit will not be made effective until two months following the reported change. The agency will take action to implement all decreased benefit amounts without waiting for verification of the reported change. In either instance the case may be closed and benefits halted if all factors of eligibility are not verified.

b. The client must report changes in the source of earned or unearned income, changes of more than $25 in gross monthly unearned income, and changes in employment status (a change from full time to part time or part time to full time, a change in wage rate or salary) to the local office within 10 days of the day the client learns of the change.

R986-414-416. Reporting Changes and Agency Actions.

The department adopts 7 CFR 273.12, 1995 edition which is incorporated by reference.

KEY: income
January 2, 1998 62A-9-105
Notice of Continuation February 10, 1997

R986. Workforce Services, Employment Development.
R986-419. Income Limits.
R986-419-900. Food Stamp Program Income Limits.

The department adopts The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, signed into law August 22, 1996, which is incorporated by reference.

TABLE
FOOD STAMP PROGRAM INCOME LIMITS

	TABLE IV	TABLE V	TABLE VI
Household	Maximum Gross Monthly Income Elderly/Disabled	Gross Monthly Income Limits	Net Monthly Income Limit

Size	165% of Poverty	130% of Poverty	100% of Poverty
1	1085	855	658
2	1459	1150	885
3	1833	1445	1111
4	2207	1739	1338
5	2581	2034	1565
6	2955	2329	1791
7	3329	2623	2018
8	3703	2918	2245
9	4077	3213	2472
10	4451	3508	2699
for each additional member add:	$374	$295	$227

KEY: food stamps
January 2, 1998 62A-9-105
Notice of Continuation August 18, 1997

R986. Workforce Services, Employment Development.
R986-420. Maximum Allotments.
R986-420-100. Maximum Food Stamp Allotment Table.

The department adopts The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, signed into law August 22, 1996, which is incorporated by reference.

TABLE

MAXIMUM FOOD STAMP ALLOTMENTS

HOUSEHOLD SIZE	MAXIMUM ALLOTMENT
1	122
2	224
3	321
4	408
5	485
6	582
7	643
8	735
9	827
10	919
Each Additional Person:	92

KEY: food stamps
January 2, 1998 62A-9-105
Notice of Continuation August 18, 1997

R986. Workforce Services, Employment Development.
R986-421. Demonstration Programs.
R986-421-101. Single Parent Employment Program.

1. The department shall operate a Single Parent Employment Demonstration Program as authorized by Section 1115 of the Compilation of the Social Security Laws, 1991 ed., U.S. Government Printing Office, Washington, D.C., which is incorporated by reference.

2. The following definitions apply:

a. "Diversion" means a one time Single Parent Employment Program payment that may equal up to three months of AFDC assistance.

b. "Participant" means any applicant for or recipient of the Single Parent Employment Program.

c. "Transitional" food stamp benefit means the 24 month period that participants are eligible for food stamp benefits after the end of financial participation in the Single Parent Employment Program.

3. The goal of the Single Parent Employment Program is to increase family income through employment and child support.

4. The Single Parent Employment Program will operate in selected offices as determined by the department.

5. The following exceptions regarding Single Parent Employment Program participants apply to R986-411 through R986-420;

a. $100 of financial assistance will not be counted in the food stamp allotment calculation.

b. $100 of earned income will not be counted after financial assistance terminates.

c. A maximum of $8,000 equity value for one vehicle will be exempt from the resource determination test. The entire equity value of one vehicle equipped to transport a disabled individual is exempt from the resource determination test.

d. Educational income is exempt.

e. $50 of child support received is exempt.

f. Participants are required to report the following changes in income of more than $100 in the Best Estimated Monthly gross income:

(i) change in the income source, both unearned and earned;

(ii) change of more than $25 in gross monthly unearned income;

(iii) change in employment status;

(iv) a change from full time to part time or part time to full time;

(v) a change in wage rate or salary.

g. The diversion payment is not counted in the food stamp allotment calculation.

h. Recertification must be completed every 12 months with a face-to-face interview at least every 24 months.

i. Participants will remain in the Single Parent Employment Program for 24 months after termination of financial assistance.

KEY: income, demonstration*
January 2, 1998 62A-9