R68. Agriculture and Food, Plant Industry.
R68-15. Quarantine Pertaining to Japanese Beetle, (Popillia Japonica).
R68-15-1. Authority.

A. Promulgated under authority of Subsection 4-2-2-(1)(j) and 4-2-2(1)(l)(ii).

B. Refer to the Notice of Quarantine, Japanese Beetle, (Popillia Japonica), Effective January 4, 1993, issued by Utah Department of Agriculture and Food.

R68-15-2. Pest.

Japanese beetle, Popillia japonica, a beetle, family Scarabaeidae, which in the larval state attacks the roots of many plants and as an adult attacks the leaves and fruits of many plants.

R68-15-3. Areas Under Quarantine.

A. The following states have been placed under a general quarantine to prohibit the entry of Japanese Beetle into Utah through the sale of plants and plant products: the entire states of Alabama, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia.

B. The same general quarantine shall apply from the following states in provinces of Canada:

1. In the Province of Ontario: Lincoln, Welland, and Wentworth.

2. In the Province of Quebec: Missiquoi and St. Jean.

C. Any areas not mentioned above which are subsequently found to be infested with Japanese Beetle, shall also be placed under this same general quarantine.

R68-15-4. Articles and Commodities Under Quarantine.

A. The following are hereby declared to be hosts and possible carriers of all stages of the Japanese beetle:

1. Soil, humus, compost and manure (except when commercially packaged and treated);

2. All plants with roots (except bareroot plants free from soil).

3. Grass Sod;

4. Plant crowns or roots for propagation (except when free from soil);

5. Bulbs, corms, tubers, and rhizomes of ornamental plants (except when free from soil);

6. Any other plant, plant part, article, or means of conveyance when it is determined by a Utah State Plant Quarantine Officer to present a hazard of spreading live Japanese beetle due to infestation or exposure to infestation by Japanese beetle.

B. Soil - For the purpose of this quarantine, soil is defined as all growing media in which the plants are actually rooted. Packing material other than soil, added to bareroot plants after harvesting would not normally pose a pest risk. Packing material would be covered under (6) above, at the inspector's discretion.

C. Free From Soil - For the purposes of this quarantine, free from soil is defined as soil in amounts that could not contain concealed Japanese beetle larvae or pupae.

R68-15-5. Restrictions.

All commodities covered are prohibited entry into Utah from the area under quarantine unless they have the required certification. Plants may be shipped from the area under quarantine into Utah provided such shipments conform to one of the options below and are accompanied by a certificate issued by an authorized state agricultural official at origin. Note that not all protocols approved in the U.S. Domestic Japanese Beetle Harmonization Plan are acceptable for Utah. Advance notification of regulated commodity shipment is required. The certificate shall bear the name and address of the shipper and receiver as well as the inspection/certificate date and the signature of state agricultural office. The certifying official shall mail, FAX or e-mail a copy of the certificate to Director, Plant Industry Division, Utah Department of Agriculture and Food, 350 North Redwood Road, P.O. Box 146500, Salt Lake City, Utah 84114-6500, FAX: (801) 538-7189, e-mail: agmain.dwilson@state.ut.us. The shipper shall notify the receiver to hold such commodities for inspection by the Utah Department of Agriculture and Food. The receiver must notify the Utah Department of Agriculture and Food of the arrival of commodities imported under the provisions of this quarantine and must hold such commodities for inspection. Such certificates shall be issued only if the shipment conforms fully with (a), (b), (c), (d) or (e) below:

(a) Production in an Approved Japanese Beetle Free Greenhouse/Screenhouse. All the following criteria apply: All media must be sterilized and free of soil; All stock must be free of soil (bareroot) before planting into the approved medium; The potted plants must be maintained within the greenhouse/screenhouse during the entire adult flight period; During the adult flight period the greenhouse/screenhouse must be made secure so that adult Japanese beetles cannot gain entry. Security will be documented by the appropriate phytosanitary officials of the origin state department of agriculture and must be specifically approved as a secure area. They shall be inspected by the same officials for the presence of all life stages of the Japanese beetle; The plants and their growing medium must be appropriately protected from subsequent infestation while being stored, packed and shipped; Certified greenhouse/screenhouse nursery stock may not be transported into or through any infested areas unless identity is preserved and adequate safeguards are applied to prevent possible infestation; Each greenhouse/screenhouse operation must be approved by the phytosanitary officials as having met and maintained the above criteria, and issued an appropriate certificate bearing the following declaration: "The rooted plants (or crowns) were produced in an approved Japanese beetle free greenhouse or screenhouse." The certificate accompanying the shipment must have the same statement as an additional declaration.

(b) Production During a Pest Free Window. The entire rooted plant production cycle will be completed within a pest free window, in clean containers with sterilized and soilless growing medium, i.e., planting, growth, harvest, and shipment

will occur outside the adult Japanese beetle flight period, June through October. The accompanying phytosanitary certificate shall bear the following additional declaration: "These plants were produced outside the Japanese beetle flight season."

(c) Applications of Approved Regulatory Treatments. All treatments will be performed under direct supervision of a phytosanitary official of the origin state department of agriculture or under a compliance agreement thereof. Treatments and procedures under a compliance agreement will be monitored closely throughout the season. State phytosanitary certificates listing and verifying the treatment used must be forwarded to the receiving state via fax or electronic mail, as well as accompanying the shipment. Note that not all treatments approved in the U.S. Domestic Japanese Beetle Harmonization Plan are acceptable for Utah. The phytosanitary certificate shall bear the following additional declaration: " The rooted plants were treated to control "Popillia japonica" according to the criteria for shipment to category 1 states as provided in the U.S. Domestic Japanese Beetle Harmonization Plan."

(A) Dip Treatment - B and B and Container Plants. Not approved.

(B) Drench Treatments - Container Plants Only. Not approved for ornamental grasses or sedges. Potting media used must be sterile and soilless, containers must be clean. Field potted plants are not eligible for certification using this protocol. This is a prophylactic treatment protocol targeting eggs and early first instar larvae. If the containers are exposed to a second flight season they must be retreated.

(1) Imidacloprid (Marathon 60WP). Apply one-half (0.5) gram of active ingredient per gallon as a prophylactic treatment just prior to Japanese beetle adult flight season (June 1, or as otherwise determined by the phytosanitary official). Apply tank mix as a drench to wet the entire surface of the potting media. A twenty-four (24) gallon tank mix should be enough to treat 120-140 one-gallon containers. Avoid over drenching so as not to waste active ingredient through leaching. During the adult flight season, plants must be retreated after sixteen (16) weeks if not shipped to assure adequate protection.

(2) Bifenthrin (Talstar Nursery Flowable 7.9%). Mix at the rate of twenty (20) ounces per 100 gallons of water. Apply, as a drench, approximately eight (8) ounces of tank mix per six (6) inches of container diameter.

(C) Media (Granule) Incorporation - Container Plants Only. All pesticides used for media incorporation must be mixed prior to potting and plants potted a minimum of thirty (30) days prior to shipment. Potting media used must be sterile and soilless; containers must be clean. The granules must be incorporated into the media prior to potting. Field potted plants are not eligible for treatment. This treatment protocol targets eggs and early first instar larvae and allows for certification of plants that have been exposed to only one flight season after application. If the containers are to be exposed to a second flight season they must be repotted with a granule incorporated mix or retreated using one of the approved drench treatments. Pesticides approved for media incorporation are:

(1) Imidacloprid (Marathon 1G). Mix at the rate of five (5) pounds per cubic yard.

(2) Bifenthrin (Talstar Nursery Granular or Talstar T and O Granular (0.2)). Mix at the rate of 25 ppm or one-third (0.33) of a pound per cubic yard based on a potting media bulk density of 200.

(3) Tefluthrin (Fireban 1.5 G). Mix at the rate of 25 ppm based on a potting media bulk density of 400.

(D) Methyl Bromide Fumigation. Nursery stock: methyl bromide fumigation at NAP, chamber or tarpaulin. See the California Commodity Treatment Manual for authorized schedules.

(d) Detection Survey for Origin Certification. Japanese Beetle Harmonization Plan protocol not approved. Alternative approved protocol: States listed in the area under quarantine may have counties that are not infested with Japanese beetle. Shipments of commodities covered may be accepted from these noninfested counties if annual surveys are made in such counties and adjacent counties and the results of such surveys are negative for Japanese beetle. In addition, the plants must be greenhouse grown or contained in media that is sterilized and free of soil and the shipping nursery must grow all their own stock from seed, unrooted cuttings or bareroot material. A list of counties so approved will be maintained by the Utah Department of Agriculture and Food. Agricultural officials from a quarantined state or province may recommend a noninfested county be placed on the approved county list by writing for such approval and stating how surveys were conducted giving the following information:

(A) Areas surveyed
(B) How survey was carried out
(C) Number of traps
(D) Results of survey
(E) History of survey

If a county was previously infested, give date of last infestation. If infestations occur in neighboring counties, approval may be denied. To be maintained on the approved list, each county must be reapproved every twelve (12) months. Shipments of commodities covered from noninfested counties will only be allowed entry into Utah if the uninfested county has been placed on the approved list prior to the arrival of the shipment in Utah. The certificate must have the following additional declaration: " The plants in this consignment were produced in (name of county), state of (name of state of origin) that is known to be free of Japanese beetle.

(e) Privately owned house plants obviously grown, or certified at the place of origin as having been grown indoors without exposure to Japanese beetle may be allowed entry into this state without meeting the requirements of section (4). Contact the Utah Department of Agriculture and Food for requirements: Director, Plant Industry Division, Utah Department of Agriculture and Food, 350 North Redwood Road, P.O. Box 146500, Salt Lake City, Utah 84114-6500, FAX: (801) 538-7189, e-mail: agmain.dwilson @state.ut.us.

R68-15-6. Disposition of Violations.

Any or all shipments or lots of quarantined articles or commodities listed in R68-15-4 above arriving in Utah in violation of this quarantine shall immediately be sent out of the state, destroyed, or treated by a method and in a manner as directed by the Commissioner of the Utah Department of Agriculture and Food or his agent. Treatment shall be performed at the expense of the owner, or owners, or their duly

authorized agent.

KEY: quarantine
January 15, 1999 4-2-2
Notice of Continuation March 5, 1998 4-35-9

R251. Corrections, Administration.
R251-105. Applicant Qualifications for Employment with Department of Corrections.
R251-105-1. Authority and Purpose.

(1) This rule is authorized by Section 63-46a-3, 64-13-10, and 64-13-25.

(2) The purpose of this rule is to provide policies and procedures for the screening, testing, interviewing, and selecting of applicants for Department of Corrections employment.

R251-105-2. Definitions.

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

(2) "POST" means Peace Officer Standards and Training.

R251-105-3. General Requirements.

It is the policy of the Department that applicants for employment:

(1) shall, for POST-certified positions, be a citizen of the United States;

(2) shall, for POST-certified positions, be a minimum of 21 years of age;

(3) shall, as a minimum, be the holder of a high school diploma or furnish evidence of successful completion of an examination indicating an equivalent achievement;

(4) may be required to pass pre-employment testing depending on position requirements;

(5) shall be free from any physical, emotional, or mental conditions which might adversely affect performance;

(6) shall not have been convicted of a crime for which the applicant could have been imprisoned in a penitentiary of this or another state and shall not have been convicted of an offense involving dishonesty, unlawful sexual conduct, physical violence, or the unlawful use, sale or possession of a controlled substance. This rule may not apply to all positions;

(7) shall, if required, become a POST-certified officer and maintain certification through successful completion of at least 40 hours of POST training per fiscal year; and

(8) may undergo a background investigation which may include verification of personal history, personal financial background, and criminal records check.

R251-105-4. Disqualification of Applicants.

(1) Applicants may be disqualified for failure:

(a) to meet education or experience qualifications;

(b) to appear for testing or interviews; or

(c) to meet minimum test score requirements.

(2) Applicants may be disqualified if found to be unsuitable for Department employment as indicated by a background investigation or psychological evaluation.

(3) Falsification of application is grounds for denying employment or for terminating employment if discovered after the applicant is hired.

(4) Disqualified applicants shall be notified in writing.

KEY: corrections, employment, prisons

1989	**63-46a-3**
Notice of Continuation February 1, 1999	**64-13-10**
	64-13-25

R277. Education, Administration.
R277-437. Student Enrollment Options.
R277-437-1. Definitions.

A. "Available school or program" means a school or program currently designated under this rule by a district as open to nonresident students.

B. "Average daily membership threshold" means 90% of the maximum capacity of a school.

C. "Core class" means a class specifically required as part of the Core Curriculum established by the Board under R277-700-11.

D. "District of residence" means a student's school district of residence under Section 53A-2-201.

E. "Instructional station" means a classroom, laboratory, shop, study hall, or physical education facility to which a local board of education has assigned a class, teacher or program during a given class period. For example, if two P.E. classes were assigned to meet in the gymnasium simultaneously, the gymnasium would represent two instructional stations.

F. "Nonresident district" means a school district other than the district of residence of the student in question.

G. "Nonresident student" means a student attending or seeking to attend a school other than the school of residence.

H. "Projected average daily membership" means the current year enrollment of a school as of October 1, adjusted for projected growth for the coming school year.

I. "Residual per student expenditure" means the expenditure based on the most recent State Superintendent's Annual Report according to the following formula:

(1) Take total expenditures before interfund transfer for:

(a) maintenance and operation;

(b) tort liability; and

(c) capital projects.

(2) Subtract from the sum of (1), above:

(a) resident district's taxes collected under the Minimum School Program;

(b) state revenue;

(c) federal revenue; and

(d) expenditures for site acquisition or new facility construction (new facility construction includes remodeling that increases building square footage or other major remodeling, if approved by the USOE Director of Finance).

(3) Divide the remainder of (1) and (2) above by the total student membership of the district as reported in the most recent State Superintendent's Annual Report.

J. "School capacity" or "maximum capacity" means the total number of students who could be served in a given school building if each of the building's instructional stations were to serve at least the following number of students:

(1) kindergarten: 10 students per room, per session -- typically two one-half day sessions per day;

(2) grades one through three: 15 students per room;

(3) grades four through six: 20 students per room;

(4) junior high and middle school: 20 students per Core class;

(5) junior high/senior high combinations: 20 students per Core class;

(6) senior high: 20 students per Core class;

(7) instructional station capacity for laboratories, physical education facilities, shops, study halls, self-contained special education classrooms, facilities jointly financed by school districts and another community agency for joint use and similar rooms must be calculated individually. Capacity for self-contained special education classrooms shall be based upon students per class as defined by Board and federal special education standards. (The above standards are based upon the UTAH STATE PUBLIC EDUCATION STRATEGIC PLAN, January 1992, page 19; and Section 53A-17a-124.5)

K. "School of residence" means the school which a student would normally attend in the student's district of residence.

L. "Serious infraction of the law or school rules" means any behavior which could, under rules of the nonresident district in which enrollment is sought, subject a student to suspension for more than ten days or expulsion.

M. "UHSAA" means the Utah High School Activities Association.

N. "USOE" means the Utah State Office of Education.

R277-437-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which places general control and supervision of the public school system under the Board, by 53A-1-402(1)(b) which directs the Utah State Board of Education to establish rules and minimum standards for access to programs and by 53A-2-207 through 213 which directs the Board to develop rules for student enrollment options.

B. The purpose of this rule is to provide: definitions relating to school choice; standards for transferring students; rules for participation in interscholastic competition; a form for students to use when applying for open enrollment; and an explanation for use of the form, "Application for Student to Attend School in Nonresident School or District," in seeking permission for a student to attend school in a school other than the school of residence.

R277-437-3. Local School Board and District Responsibilities.

A. Prior to November 30 of each school year a local board shall announce policies describing procedures for students to follow in applying to attend schools other than their respective schools of residence, and designate which schools and programs will be available for open enrollment during the coming school year.

(1) A local board shall designate each school which has a projected daily membership below the average daily membership threshold as available for open enrollment, and may designate schools as available even though projected daily membership exceeds threshold levels.

(2) If construction, remodeling, or other circumstances beyond the control of the board do not reasonably permit the board to make sufficiently accurate enrollment projections for a given school to determine whether the school should be designated as available for open enrollment for the coming year, the board shall permit submission of enrollment applications for that school during the application period and notify applicants that approval will be delayed until additional information is available.

(3) Whether applications are received for schools

designated as open, or for schools for which the local board was unable to make a designation, the board must give applicants written notification of acceptance or rejection of their applications by March 1 (for new nonresident students) or March 15 (for current nonresident students).

B. As required under Subsection 53A-2-210(2), a resident district shall pay to a nonresident district one-half of the resident district's residual per student expenditure for each resident student properly registered in the nonresident district.

C. A district shall allow an enrolled nonresident student to remain enrolled in the district, subject to the conditions noted under Subsections 53A-2-207(6) and (7), provided:

(1) if a nonresident student is to be excluded from continued enrollment in a school because current or projected resident student enrollment meets or exceeds maximum school capacities, and there is another school which the student could attend within the district which has not reached maximum enrollment, the nonresident student shall be given the opportunity to enroll in that school.

(2) nonresident students who must be relocated under Subsection (1) due to increased enrollment of resident students, and siblings of nonresident students who are currently attending a school within the district, shall have priority in enrollment over other nonresident students who are seeking enrollment in the district for the first time.

(3) a school district may designate the schools which students shall attend as they move from elementary school to middle school to high school. Attendance at a specific elementary, junior high or middle school does not guarantee attendance at a specific junior high or high school.

D. Each local board shall establish a procedure to consider appeals of any denial of initial or continued enrollment of a nonresident student under Subsection 53A-2-209(1).

E. A local board of education may limit open enrollment options when they negatively affect the capacity, programs, class size, grade levels or school buildings of the resident or the receiving school.

R277-437-4. Student Participation in Interscholastic Competition.

A. A student in the ninth grade or above who transfers between schools shall be ineligible for varsity level interscholastic competition for one year after the first day of attendance following completion of transfer to the new school unless:

(1) The transfer results from a change of residence as defined under Section 53A-2-201;

(2) The transfer results from promotion to a grade not offered in the student's previous school, provided the receiving school is the one designated by the district to receive transfer students from the previous school;

(3) The student is required to transfer by the local board of education;

(4) The transfer occurs under a special group "block" permit established by one or more districts; or

(5) The UHSAA Transfer Committee grants an exception based upon exceptional circumstances and undue hardship.

B. A student's transfer between schools shall not extend eligibility for interscholastic competition beyond the eight consecutive semesters allowed under UHSAA by-laws.

C. If a student is transferred pursuant to a judicial order, the student shall immediately become eligible for interscholastic competition in the court-designated resident district for a period not to exceed the eight consecutive semesters under UHSAA By-laws.

D. A student is only eligible for interscholastic competition through the school of attendance; i.e., a student may not attend one school for academic classes and participate in interscholastic competition at a different school, except that a local board of education may allow ninth grade students to participate with the high school to which they would normally be assigned upon completion of the ninth grade.

R277-437-5. Transportation.

A school district may transport its students to schools in other districts under Subsection 53A-2-210(3)(b)(i).

KEY: public education, enrollment options*
January 5, 1999 **Art X Sec 3**
53A-1-401(1)(b)
53A-2-207 through 53A-2-213

R277. Education, Administration.
R277-470. Distribution of Funds for Charter Schools.
R277-470-1. Definitions.

A. "ADM" means average daily membership.

B. "Board" means the Utah State Board of Education.

C. "Charter schools" means schools approved by the Board under Section 53A-1a-505.

D. "On-going funds" means funds that are appropriated annually with the expectation that the funds will continue to be appropriated annually.

E. "One-time funds" means funds that are appropriated with the expectation that they may not be appropriated in subsequent years.

F. "USOE" means the Utah State Office of Education.

G. "Weighted Pupil Unit (WPU)" means the unit of measure that is computed in accordance with the Minimum School Program Act for the purpose of determining the costs of a program on a uniform basis for each district.

R277-470-2. Authority and Purpose.

This rule is authorized under Utah Constitution, Article X which vests general control and supervision over public education in the Board, Section 53A-1a-513(1)(b)(i) which directs the Board to adopt rules to provide a funding formula to pay school districts for charter school students, Section 53A-1a-513(2)(a) which directs the Board to adopt rules relating to the transportation of students to and from charter schools, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

R277-470-3. Funding Through WPUs.

A. All funding for charter school students shall be paid by the USOE to school districts.

B. School districts shall receive funding for charter school students on the same basis that they receive funding for other students in the district.

C. School districts shall distribute to eligible charter schools, upon request and verification of data, a proportional amount of the WPU for each eligible charter school student for the following programs or funding sources:

(1) Regular WPU;
(2) Class Size Reduction;
(3) Local Programs;
(4) Gifted and Talented;
(5) At Risk Flow Through; and
(6) Professional Staff (if data is submitted as outlined in R277-470-8.

D. Upon application and approval, a school district shall distribute to charter schools funds from the following programs or funding sources:

(1) Special Education;
(2) Career Ladder;
(3) Applied Technology;
(4) Youth in Custody;
(5) Advanced Placement; and
(6) Concurrent Enrollment.

R277-470-4. Distribution of Additional Funds.

A. A charter school shall receive a dollar amount per student from the following on-going programs or sources or funding:

(1) Social Security and Retirement;
(2) Class Size Reduction (for 7th and 8th grade students only);
(3) Experimental Developmental; and
(4) Educational Technology Initiative

B. A charter school shall receive a dollar amount per student from one-time programs or sources of funding which are part of the Minimum School Program if those funds are distributed on a per student or per teacher basis.

C. A charter school shall receive funds from the Alternative Language Services Program, upon application, by the charter school.

R277-470-5. Federal Funds.

If the school district receives funding and the charter school provides requisite services, then the charter school shall receive proportional funds for eligible students, upon application, for the following programs:

(1) Individuals with Disabilities Act (students with IEP's only);
(2) Title I - Basic Grant (free and reduced lunch eligible students);
(3) Title II - Professional Development (total students and disadvantaged students);
(4) Impact Aid (students who qualify);
(5) Title VI (total number of students);
(6) Safe and Drug Free Schools (students who qualify);
(7) Bilingual Education - Subpart I (based on the number of students receiving services);
(8) School Dropout Demonstration Act; and
(9) Goals 2000.

R277-470-6. Start Up Funds.

A charter school shall receive start up funds based upon available funds, total requests, number of students served, and needs as outlined in individual proposals submitted by each charter school.

R277-470-7. Residency for Funding Purposes.

A. For purposes of state and federal funding, a charter school student is considered a resident of the district in which the charter school is located.

B. For purposes of local funding, a district shall pay to an eligible charter school one-half of the original resident district's residual per student expenditure for each student properly registered in a charter school according to formula developed by the USOE.

R277-470-8. Ongoing Funds.

A. Ongoing funds shall be distributed to charter schools based on data submitted by the charter schools. Data shall include names of students, addresses, resident districts, grades, birth dates, immunization data, and special program applications, as necessary. Districts shall distribute these funds ten days after receiving the data from charter schools.

B. Distributions for September and October shall be made to charter schools based on data submitted to the district five

school days after the beginning of the school year, as determined by the Board-approved charter. If school begins later than September, the distribution for the first two months will be based on data submitted for the first five days of school.

C. Charter schools that provide verification of appropriate professional staff as defined under Section 53A-1a-512(3) by November 14 shall receive designated professional staff funding.

D. The remaining distributions shall be made based on enrollment data as of the charter school's first school day of the preceding month.

E. A monthly payment shall equal ten percent of a charter school's annual entitlement as determined at the first of each month.

F. Monthly payments shall be adjusted entitling the charter school to the appropriate percentage of its eligible funding for the school year, based on projected ADM for the year.

G. Necessary final calculations shall be made by June 30 of each year.

R277-470-9. Funding for Transportation.

A. Charter schools are not eligible for to-and-from school transportation funds.

B. A charter school transporting students is subject to Utah law under Section 41-6-115.

C. A school district may provide transportation for charter school students on a space-available basis on approved routes.

(1) Districts may not incur increased costs or displace eligible students to transport charter school students.

(2) A charter school student shall board and leave the bus only at existing designated stops on approved bus routes or at identified destination schools.

(3) A charter school student shall board and leave the bus at the same stop each day.

KEY: education, charter schools*
November 3, 1998
Art X, Sec 3
53A-1a-513(1)(b)(i)
53A-1a-513(2)(a)
53A-1-401(3)

R277. Education, Administration.

R277-735. Standards and Procedures for Corrections Education Programs Serving Inmates of the Utah Department of Corrections.

R277-735-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Inmate" means a person who is in the custody of the Utah Department of Corrections. Inmates may be housed in various locations throughout the state of Utah.

C. "Custody" means the status of being legally in the control of another adult person or a public agency.

D. "Recidivism Reduction Service Program" means an inmate service program consisting of at least nine components (Inmate Assessment, Cognitive Problem Solving Skills, Basic Literacy Skills, Career Skills, Job Placement, Post-release Tracking and Support, Research and Evaluation, Family Involvement and Support, and Multi-agency Collaboration) collaboratively planned and implemented by a minimum of the following agencies: appropriate local boards of education, Department of Corrections, Department of Employment Security, Department of Human Services, Board of Pardons, State Office of Rehabilitation, State Board of Regents, and the Governor's Office.

E. "Individual Development Plan" means a comprehensive inmate service plan developed collaboratively by state service agencies.

F. "Individual Educational Plan" means a written individual inmate educational service plan which is a part of the Individual Development Plan.

G. "USOE" means the Utah State Office of Education.

R277-735-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and authority over public education in the Board, by Section 53A-1-403.5 which makes the Board directly responsible for the education of inmates in custody and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify operation standards and procedures for inmates in custody programs.

R277-735-3. Student Evaluation and Educational Plan.

A. Each student meeting the definition of an inmate in custody shall be evaluated upon initial entry into custody of the Department of Corrections and as needed thereafter for the purposes of determining needed services to meet requirements for a reduction in the inmate recidivism rate.

B. The institution receiving the student is responsible for obtaining the student's evaluation records, and, in cases where the records are not current, for conducting necessary evaluation as quickly as possible.

C. Based upon the results of the student evaluation, an appropriate individual development plan and individual educational plan shall be prepared for each inmate in custody.

(1) Each inmate educational plan shall be reviewed and made current at least once each year or immediately following transfer of a student from one institution to another whichever is sooner.

(2) The plans shall be developed in collaboration with representatives of other appropriate service agencies working with the respective students.

D. Selected student educational plans shall be part of a written inmate Recidivism Reduction Service Program.

(1) The Recidivism Reduction Service Program shall specify the responsibilities of each of the agencies towards the students.

(2) The Plan shall be signed by each agency's representative and the inmate.

E. Educational Programs

(1) The appropriate (or designated) educational agency shall provide an educational program for the student which conforms as closely as possible to the student's individual educational plan.

(2) Educational services shall be provided in the least restrictive environment appropriate for the student's behavior and educational performance.

(3) Educational programs to which inmates in custody are assigned shall meet the standards adopted by the Board for that type program.

(4) Compliance of service plans shall be monitored by the USOE in periodic review visits.

(5) Educational services shall be sufficiently coordinated with non-custody programs to enable inmates in custody to continue their education with minimal disruption following discharge from custody.

(6) Custodial status alone does not qualify a student as being disabled under laws regulating education or educational programs for persons with disabilities.

F. Admission into Educational Programs

Inmates in custody shall be admitted to classes within resources available within ten school days following arrival at a new residential placement.

G. When a student inmate is transferred to a new program, the sending program shall make all available school records current and forward them to the receiving program within one week following notification of release or transfer.

H. When a student inmate is released from custody, educational records shall only be available through standard signed release procedures.

R277-735-4. Procedures for Providing Services.

A(1) The Board may contract with local school districts, state post-secondary educational institutions, other state agencies, or private providers to provide educational services for inmates in custody.

(2) The respective responsibilities of the Board, the local school districts, and other service providers for education shall be established by letters of agreement or contracts.

(3) A district may sub-contract with local educational service providers for the provision of educational services.

B. Inmates receiving educational services by or through a school district become students of that district for funding purposes.

C. Funding

(1) State funds appropriated to the USOE for inmates in custody shall be allocated to districts on the basis of annual applications.

(2) The funds distributed to a district shall be based upon

criteria which include:

(a) the number of inmates in custody served in the district;

(b) the type of services provided to the inmates;

(c) the setting for providing services;

(d) the length of the program; and

(e) evidence of a reduced rate of inmate return to prison.

D. Funds approved for inmates in custody projects can be expended only for the purposes described in the respective funding application.

E. Unexpended funds may not be carried over from one fiscal year to the next, except by specific approval of the Board or its designee.

F. Federal funds provided to the USOE for use by school districts under Title 1 of the Improving America's Schools Act of 1994, P.L. 103-382, Title I, Part D, Catalogue of Federal Domestic Assistance #84.013A, for the education of inmates in custody shall be allocated in accordance with Subsection R277-735-4C. These materials are available at the State Office of Education in the Deputy Superintendent's Office.

G. The Board, or its designee, shall adopt uniform pupil and fiscal accounting procedures, forms, and deadlines for inmates in custody programs.

H. Program Staff

(1) Education staff assigned to service inmates in custody shall be qualified and appropriate for their assignments.

(2) The teaching certificate and endorsement held by a staff member shall be important in evaluating the appropriateness of a teacher's assignment, but not controlling. For instance, elementary teachers may teach secondary age students who are functioning at an elementary level in certain subjects.

R277-735-5. Confidentiality.

A. Transcripts and diplomas prepared for inmates in custody shall be issued in the name of the contracted educational agency which also provides service to non-custodial inmates and shall not bear reference to custodial status.

B. School records which refer to custodial status, inmate court records, and related matters shall be kept separate from permanent school records and shall be destroyed or may be sealed upon order of a court of competent jurisdiction.

C. Access to Student Records

(1) Staff which design and oversee individual student plans shall have access to all appropriate records relevant to the student's education.

(2) Information obtained from records remains the property of the supplying agency and shall not be transferred or shared with other persons or agencies without the permission of the supplying agency, consistent with Section 63-2-206.

(3) Access to and provision of student records or transcripts shall be consistent with state and federal law.

R277-735-6. Advisory Council.

Local educational agencies serving inmates in custody shall collaborate to establish a local interagency advisory council of all service groups which shall be responsible for the provision of services and programs to inmates in their service areas.

KEY: public education, custody*, inmates*

January 5, 1999 **Art X Sec 3**
53A-1-403.5
53A-1-401(3)

R280. Education, Applied Technology Education (Board for), Rehabilitation.

R280-201. USOR ADA Complaint Procedure.

R280-201-1. Definitions.

A. "ADA" means the Americans with Disabilities Act, 42 U.S.C. 12201, which provides that no qualified individual with a disability, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by this or any such entity.

B. "The ADA Coordinator" means the designee of the State Board of Education, who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities in accordance with the Americans with Disabilities Act, or provisions of this rule.

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

(1) Office of Planning and Budget;

(2) Department of Human Resource Management;

(3) Division of Risk Management;

(4) Division of Facilities Construction Management; and

(5) Office of the Attorney General.

D. "Disability" means, with respect to an individual disability, a physical or mental impairment that substantially limits one or more of the major life activities of such an individual; a record of such an impairment; or being regarded as having such an impairment. The definition of "disability" specifically excludes: transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, other sexual behavior disorders, compulsive gambling, kleptomania, pyromania, and psychoactive substance use disorders resulting from current illegal use of drugs.

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

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

G. "Executive Director" means the Executive Director of the Utah State Office of Rehabilitation.

H. "USOR" means the Utah State Office of Rehabilitation.

R280-201-2. Authority and Purpose.

A. This rule is authorized pursuant to 28 CFR 35.107, 1992 edition, which adopts, defines, and publishes complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans with Disabilities Act, 28 CFR 35, 1992 edition.

B. The purposes of this rule are:

(1) to establish a USOR procedure for filing complaints under the federal ADA law;

(2) provide an appeals procedure;

(3) provide for appropriate classification of the records of complaints and appeals; and

(4) to guarantee at this agency level that no qualified individual with a disability, by reason of such disability, shall be excluded from participation in or be denied the benefits of the services, programs, or activities of the USOR, or be subjected to discrimination by the USOR.

R280-201-3. Filing of Complaints.

A. The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but not later than 60 days from the date of the alleged act of discrimination. However, any complaint alleging an act of discrimination occurring between January 26, 1992 and the effective date of this rule may be filed within 60 days of the effective date of this rule.

B. The complaint shall be filed with the USOR's ADA Coordinator in writing or in another format suitable to the individual.

C. Each complaint shall:

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

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

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

(4) describe the action and accommodation desired; and

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

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

R280-201-4. Investigation of Complaint.

A. The ADA coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in Section 3(C) of this rule if it is not made available by the individual.

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

R280-201-5. Issuance of Decision.

A. Within 30 working days after receiving the complaint, the ADA coordinator shall issue a decision outlining in writing or in another suitable format stating what action, if any, shall be taken on the complaint.

B. If the coordinator is unable to reach a decision within the 30 working day period, he shall notify the individual with a disability in writing or by another suitable format why the

decision is being delayed and what additional time is needed to reach a decision.

R280-201-6. Appeals.

A. The individual may appeal the decision of the ADA coordinator by filing an appeal within 10 working days from the receipt of the decision.

B. The appeal shall be filed in writing with the Executive Director.

C. The filing of an appeal shall be considered as authorization by the individual to allow review of all information, including information classified as private or controlled, by the Executive Director or designee.

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

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

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

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

R280-201-7. Classification of Records.

The record of each complaint and appeal, and all written records produced or received as part of such actions, shall be classified as protected as defined under Section 63-2-304 until the ADA coordinator or Executive Director issues the decision at which time any portions of the record which may pertain to the individual's medical condition shall remain classified as private as defined under Section 63-2-302 or controlled as defined in Section 63-2-303. All other information gathered as part of the complaint record shall be classified as private information. Only the written decision of the coordinator or Executive Director shall be classified as public information.

R280-201-8. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to the individuals under the State Anti-Discrimination Complaint Procedures, Section 67-19-32; the Federal ADA Complaint Procedures (28 CFR Subpart F, beginning with Part 35.170, 1992 edition); or any other Utah state or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: complaints, disabled persons

January 5, 1999

28 CFR 35
28 CFR 35.107
42 U.S.C. 12201
63-2-304
63-2-302
63-2-303
67-19-32

R280. Education, Applied Technology Education (Board for), Rehabilitation.

R280-202. USOR Procedures for Individuals with the Most Severe Disabilities.

R280-202-1. Definitions.

A. "Individual with a disability" (hereinafter individual) means a person who has a disability which limits one or more of his major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by the USOR or the State Board of Education.

B. "Executive Director" means the Executive Director of the Utah State Office of Rehabilitation.

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

D. "USOR" means the Utah State Office of Rehabilitation.

E. "Board" means the Utah State Board of Education.

F. "Supplemental Security Income (SSI)" means payments to adults and children who are determined to be severely disabled or blind and whose assets and income are below the limits set by the Social Security Administration.

G. "Social Security Disability Insurance (SSDI)" means payments to disabled workers under 65 and their families, or people who become disabled before age 22, or disabled widows or widowers 50 or over who are found to be eligible under Social Security Administration criteria.

R280-202-2. Authority and Purpose.

A. This rule is authorized pursuant to PL 102-569, Title VI-C, October, 1992, which directs state agencies to define for themselves individuals with the most severe disabilities and Section 53A-24-103 which directs that the USOR shall be under the policy direction of the Board.

B. The purpose of this rule is to define "persons with the most severe disabilities" for purposes of providing services and determining order of selection for services according to federal and state law.

R280-202-3. Eligibility Criteria.

In order to be classified as an individual with the most severe disabilities an individual shall meet one of the criteria under Subsection A below or the criteria under Subsection B below:

A. The USOR shall make the determination using the following documentation:

(1) Eligible for services from Division of Services for People with Disabilities, (DSPD); or

(2) Determined severely and persistently mentally ill (SPMI) by the State Division of Mental Health or any one of the private, non-profit mental health programs certified by the State Division of Mental Health; or

(3) Found to be permanently and totally disabled by the State Labor Commission; and

(4) Individuals who are allowed SSI/SSDI blind or disabled may or may not be considered most severe. To be considered most severe there must be two or more functional limitations; and

(5) The individual will require multiple VR services over an extended period of time.

B. If an appropriate determination has not been made by another agency, the individual must exhibit functional deficits in two or more of the following areas to be considered an individual with the most severe disabilities. Examples under the seven categories include:

(1) Mobility

(a) Requires assistive devices (cane, crutches, prosthesis, walker, wheelchair) to be mobile.

(b) Is unable to climb one flight of stairs without pause.

(c) Is unable to walk 100 meters without pause.

(d) Cannot leave a building independently in less than three minutes.

(e) Other mobility deficits as defined or approved by the USOR.

(2) Communication

(a) Expressive and receptive primary mode of communication is unintelligible to non-family members.

(b) Does not demonstrate understanding of simple requests or is unable to understand one-to-two step instructions.

(c) Other communication deficits as defined or approved by the USOR.

(3) Self-care: Is unable to perform normal activities of daily living without assistance.

(4) Self direction: Is unable to provide informed consent for life issues without the assistance of a court-appointed legal representative or guardian; or has been declared legally incompetent.

(5) Learning ability and inter-personal deficits

(a) Valid psychological assessment of conceptual intelligence reflects performance approximately two standard deviations or more below the mean observed in a population of persons of a comparable background; commonly defined as an IQ of 70 or below on a standardized measure of intelligence.

(b) Disfigurement or deformity so pronounced as to cause social rejection.

(c) Demonstrated behavior such that the individual is a danger to self and others without supervision.

(d) Other learning or interpersonal deficits as defined or approved by the USOR.

(6) Capacity for Independence

(a) Unable to perform tasks such as locate and use telephone.

(b) Unable to access public transportation without assistance.

(c) Unable to understand money or change making.

(d) Unable to tell time.

(e) Other deficits in independence as defined or approved by the USOR.

(7) Work skills and work tolerance

(a) Unable to perform sustained work for more than four hours per day.

(b) Unable to perform work outside sheltered environment.

(c) Unable to perform work in an integrated setting without support;

(d) Other work related deficits as defined or approved by the USOR; and

(e) The individual will require multiple vocational

rehabilitation services over an extended period of time.

C. When the determination of individuals with the most severe disabilities is made under Subsection B above, the counselor must document the functional deficits.

KEY: disabled persons, rehabilitation
January 5, 1999 Pub. L. 102-569
53A-24-103

R307. Environmental Quality, Air Quality.
R307-101. General Requirements.
R307-101-1. Foreword.

Chapter 19-2 and the rules adopted by the Air Quality Board constitute the basis for control of air pollution sources in the state. These rules apply and will be enforced throughout the state, and are recommended for adoption in local jurisdictions where environmental specialists are available to cooperate in implementing rule requirements.

National Ambient Air Quality Standards (NAAQS), National Standards of Performance for New Stationary Sources (NSPS), National Prevention of Significant Deterioration of Air Quality (PSD) standards, and the National Emission Standards for Hazardous Air Pollutants (NESHAPS) apply throughout the nation and are legally enforceable in Utah.

R307-101-2. Definitions.

Except where specified in individual rules, definitions in R307-101-2 are applicable to all rules adopted by the Air Quality Board.

"Actual 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 15 - 40 (1997)."

"Air Contaminant" means any particulate matter or any gas, vapor, suspended solid or any combination of them, excluding steam and water vapors (Section 19-2-102(1)).

"Air Contaminant Source" means any and all sources of emission of air contaminants whether privately or publicly owned or operated (Section 19-2-102(2)).

"Air Pollution" means the presence in the ambient air of one or more air contaminants in such quantities and duration and under conditions and circumstances, as is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or use of property as determined by the standards, rules and regulations adopted by the Air Quality Board (Section 19-2-104).

"Air Quality Related Values" means, as used in analyses under R307-401-4(1), 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 R307-401-6.

"Ambient Air" means the surrounding or outside air (Section 19-2-102(4)).

"Appropriate Authority" means the governing body of any city, town or county.

"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.

"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.

"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 R307-405 is submitted by a major source or major modification subject to the requirements of 40 CFR 52.21 or R307-405. 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.

"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).

"Breakdown" means any malfunction or procedural error, to include but not limited to any malfunction or procedural error during start-up and shutdown, which will result in the inoperability or sudden loss of performance of the control equipment or process equipment causing emissions in excess of those allowed by approval order or Title R307.

"BTU" means British Thermal Unit, the quantity of heat necessary to raise the temperature of one pound of water one degree Fahrenheit.

"Calibration Drift" means the change in the instrument meter readout over a stated period of time of normal continuous operation when the VOC concentration at the time of measurement is the same known upscale value.

"Carbon Adsorption System" means a device containing adsorbent material (e.g., activated carbon, aluminum, silica gel), an inlet and outlet for exhaust gases, and a system for the proper disposal or reuse of all VOC adsorbed.

"Carcinogenic Hazardous Air Pollutant" means any hazardous air pollutant that is classified as a known human carcinogen (A1) or suspected human carcinogen (A2) by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents - Biological Exposure Indices, pages 15 - 40 (1997)."

"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 15 - 40 (1997)."

"Clean Air Act" means federal Clean Air Act as amended in 1990.

"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.

"Commence" as applied to construction of a major source or major modification means that the owner or operator has all necessary pre-construction approvals or permits and either has:

(1) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

"Compliance Schedule" means a schedule of events, by date, which will result in compliance with these regulations.

"Construction" means any physical change or change in the method of operation including fabrication, erection, installation, demolition, or modification of a source which would result in a change in actual emissions.

"Control Apparatus" means any device which prevents or controls the emission of any air contaminant directly or indirectly into the outdoor atmosphere.

"Department" means Utah State Department of Environmental Quality. See Section 19-1-103(1).

"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)).

"Enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the State Implementation Plan and R307, any permit requirements established pursuant to 40 CFR 52.21 or R307-401.

"EPA" means Environmental Protection Agency.

"Executive Director" means the Executive Director of the Utah Department of Environmental Quality. See Section 19-1-

103(2).

"Executive Secretary" means the Executive Secretary of the Board.

"Existing Installation" means an installation, construction of which began prior to the effective date of any regulation having application to it.

"Facility" means machinery, equipment, structures of any part or accessories thereof, installed or acquired for the primary purpose of controlling or disposing of air pollution. It does not include an air conditioner, fan or other similar device for the comfort of personnel.

"Fireplace" means all devices both masonry or factory built units (free standing fireplaces) with a hearth, fire chamber or similarly prepared device connected to a chimney which provides the operator with little control of combustion air, leaving its fire chamber fully or at least partially open to the room. Fireplaces include those devices with circulating systems, heat exchangers, or draft reducing doors with a net thermal efficiency of no greater than twenty percent and are used for aesthetic purposes.

"Fugitive Dust" means particulate, composed of soil and/or industrial particulates such as ash, coal, minerals, etc., which becomes airborne because of wind or mechanical disturbance of surfaces. Natural sources of dust and fugitive emissions are not fugitive dust within the meaning of this definition.

"Fugitive Emissions" means emissions from an installation or facility which are neither passed through an air cleaning device nor vented through a stack or could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Garbage" means all putrescible animal and vegetable matter resulting from the handling, preparation, cooking and consumption of food, including wastes attendant thereto.

"Gasoline" means any petroleum distillate, used as a fuel for internal combustion engines, having a Reid vapor pressure of 4 pounds or greater.

"Hazardous Air Pollutant (HAP)" means any pollutant listed by the EPA as a hazardous air pollutant in conformance with Section 112(b) of the Clean Air Act. A list of these pollutants is available at the Division of Air Quality.

"Heavy Fuel Oil" means a petroleum product or similar material with a boiling range higher than that of diesel fuel.

"Household Waste" means any solid or liquid material normally generated by the family in a residence in the course of ordinary day-to-day living, including but not limited to garbage, paper products, rags, leaves and garden trash.

"Incinerator" means a combustion apparatus designed for high temperature operation in which solid, semisolid, liquid, or gaseous combustible wastes are ignited and burned efficiently and from which the solid and gaseous residues contain little or no combustible material.

"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.

"Installation" means a discrete process with identifiable emissions which may be part of a larger industrial plant. Pollution equipment shall not be considered a separate installation or installations.

"LPG" means liquified petroleum gas such as propane or butane.

"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 R307:

(1) any stationary source of air pollutants which emits, or has the potential to emit, one hundred tons per year or more of any pollutant subject to regulation under the Clean Air Act; or

(a) any source located in a nonattainment area for carbon monoxide which emits, or has the potential to emit, carbon monoxide in the amounts outlined in Section 187 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 187 of the federal Clean Air Act; or

(b) any source located in Salt Lake or Davis Counties or in a nonattainment area for ozone which emits, or has the potential to emit, VOC or nitrogen oxides in the amounts outlined in Section 182 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 182 of the federal Clean Air Act; or

(c) any source located in a nonattainment area for PM10 which emits, or has the potential to emit, PM10 or any PM10 precursor in the amounts outlined in Section 189 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 189 of the federal Clean Air Act.

(2) any physical change that would occur at a source not qualifying under subpart 1 as a major source, if the change would constitute a major source by itself;

(3) the fugitive emissions and fugitive dust of a stationary source shall not be included in determining for any of the purposes of these R307 rules whether it is a major stationary source, unless the source belongs to one of the following

categories of stationary sources:

(a) Coal cleaning plants (with thermal dryers);

(b) Kraft pulp mills;

(c) Portland cement plants;

(d) Primary zinc smelters;

(e) Iron and steel mills;

(f) Primary aluminum or reduction plants;

(g) Primary copper smelters;

(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(i) Hydrofluoric, sulfuric, or nitric acid plants;

(j) Petroleum refineries;

(k) Lime plants;

(l) Phosphate rock processing plants;

(m) Coke oven batteries;

(n) Sulfur recovery plants;

(o) Carbon black plants (furnace process);

(p) Primary lead smelters;

(q) Fuel conversion plants;

(r) Sintering plants;

(s) Secondary metal production plants;

(t) Chemical process plants;

(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British Thermal Units per hour heat input;

(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(w) Taconite ore processing plants;

(x) Glass fiber processing plants;

(y) Charcoal production plants;

(z) Fossil fuel-fired steam electric plants of more than 250 million British Thermal Units per hour heat input;

(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the federal Clean Air Act.

"Modification" means any planned change in a source which results in a potential increase of emission.

"National Ambient Air Quality Standards (NAAQS)" means the allowable concentrations of air pollutants in the ambient air specified by the Federal Government (Title 40, Code of Federal Regulations, Part 50).

"Net Emissions Increase" means the amount by which the sum of the following exceeds zero:

(1) any increase in actual emissions from a particular physical change or change in method of operation at a source; and

(2) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable. For purposes of determining a "net emissions increase":

(a) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date five years before construction on the particular change commences; and the date that the increase from the particular change occurs.

(b) An increase or decrease in actual emissions is creditable only if it has not been relied on in issuing a prior approval for the source which approval is in effect when the increase in actual emissions for the particular change occurs.

(c) An increase or decrease in actual emission of sulfur dioxide, nitrogen oxides or particulate matter which occurs before an applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM10 emissions will be used to evaluate this increase or decrease.

(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(e) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) It is enforceable at and after the time that actual construction on the particular change begins; and

(iii) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(iv) It has not been relied on in issuing any permit under R307-401 nor has it been relied on in demonstrating attainment or reasonable further progress.

(f) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

"New Installation" means an installation, construction of which began after the effective date of any regulation having application to it.

"Nonattainment Area" means 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.

"Owner or Operator" means any person who owns, leases, controls, operates or supervises a facility, an emission source, or air pollution control equipment.

"PSD" Area means an area designated as attainment or unclassifiable under section 107(d)(1)(D) or (E) of the federal Clean Air Act.

"PM10 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 R307-415.

"Peak Ozone Season" means June 1 through August 31, inclusive.

"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)).

"Potential to Emit" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Process Level" means the operation of a source, specific to the kind or type of fuel, input material, or mode of operation.

"Process Rate" means the quantity per unit of time of any raw material or process intermediate consumed, or product generated, through the use of any equipment, source operation, or control apparatus. For a stationary internal combustion unit or any other fuel burning equipment, this term may be expressed as the quantity of fuel burned per unit of time.

"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.

"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.

"Regulated air pollutant" means any of the following:

(a) Nitrogen oxides or any volatile organic compound;

(b) Any pollutant for which a national ambient air quality standard has been promulgated;

(c) Any pollutant that is subject to any standard promulgated under Section 111 of the Act, Standards of Performance for New Stationary Sources;

(d) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act, Stratospheric Ozone Protection;

(e) Any pollutant subject to a standard promulgated under Section 112, Hazardous Air Pollutants, or other requirements established under Section 112 of the Act, including Sections 112(g), (j), and (r) of the Act, including any of the following:

(i) Any pollutant subject to requirements under Section 112(j) of the Act, Equivalent Emission Limitation by Permit. If the Administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the Act;

(ii) Any pollutant for which the requirements of Section 112(g)(2) of the Act (Construction, Reconstruction and Modification) have been met, but only with respect to the individual source subject to Section 112(g)(2) requirement.

"Residence" means a dwelling in which people live, including all ancillary buildings.

"Residential Solid Fuel Burning" device means any residential burning device except a fireplace connected to a chimney that burns solid fuel and is capable of, and intended for use as a space heater, domestic water heater, or indoor cooking appliance, and has an air-to-fuel ratio less than 35-to-1 as determined by the test procedures prescribed in 40 CFR 60.534. It must also have a useable firebox volume of less than 6.10 cubic meters or 20 cubic feet, a minimum burn rate less than 5 kilograms per hour or 11 pounds per hour as determined by test procedures prescribed in 40 CFR 60.534, and weigh less than 800 kilograms or 362.9 pounds. Appliances that are described as prefabricated fireplaces and are designed to accommodate doors or other accessories that would create the air starved operating conditions of a residential solid fuel burning device shall be considered as such. Fireplaces are not included in this definition for solid fuel burning devices.

"Salvage Operation" means any business, trade or industry engaged in whole or in part in salvaging or reclaiming any product or material, including but not limited to metals, chemicals, shipping containers or drums.

"Secondary Emissions" means emissions which would occur as a result of the construction or operation of a major source or major modification, but do not come from the major source or major modification itself.

Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the source or modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

Fugitive emissions and fugitive dust from the source or modification are not considered secondary emissions.

"Significant" means:

(1) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Carbon monoxide: 100 ton per year (tpy)

Nitrogen oxides: 40 tpy

Sulfur dioxide: 40 tpy

PM10 Particulate matter: 15 tpy

Particulate matter: 25 tpy

Ozone: 40 tpy of volatile organic compounds

Lead: 0.6 tpy

(2) For purposes of R307-405 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).

"Solid Fuel" means wood, coal, and other similar organic material or combination of these materials.

"Solvent" means organic materials which are liquid at standard conditions (Standard Temperature and Pressure) and which are used as dissolvers, viscosity reducers, or cleaning agents.

"Source" means any structure, building, facility, or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act and which is located on one or more continuous or adjacent properties and which is under the control of the same person or persons under common control. A building, structure, facility, or installation means all of the pollutant-emitting activities which belong to the same industrial grouping. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e. which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (US Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

"Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

"Standards of Performance for New Stationary Sources" means the Federally established requirements for performance and record keeping (Title 40 Code of Federal Regulations, Part 60).

"State" means Utah State.

"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 (1997), pages 15 - 40."

"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 (1997), pages 15 - 40."

"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.

"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.

"Volatile Organic Compound (VOC)" as defined in 40 CFR Subsection 51.100(s)(1), as amended 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.

"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.

KEY: air pollution, definitions*
January 7, 1999 **19-2-104**

R307. Environmental Quality, Air Quality.
R307-221. Emission Controls for Existing Municipal Solid Waste Landfills.
R307-221-1. Purpose and Applicability.

(1) To meet the requirements of 42 U.S.C. 7411(d) and 40 CFR 60.30c through 60.36c, and to meet the requirements of the plan for Municipal Solid Waste Landfills, incorporated by reference at R307-220-2, R307-221 regulates emissions from existing municipal solid waste landfills.

(2) R307-221 applies to each existing municipal solid waste landfill for which construction, reconstruction or modification was commenced before May 30, 1991. Municipal solid waste landfills which closed prior to November 8, 1987, are not subject to R307-221. Physical or operational changes made solely to comply with the plan for Municipal Solid Waste Landfills are not considered a modification or reconstruction and do not subject the landfill to the requirements of 40 CFR 60 Subpart WWW.

(3) Municipal solid waste landfills with a design capacity greater than or equal to 2.5 million megagrams(2,755,750 tons) and 2.5 million cubic meters (3,270,000 cubic yards) are subject to the emission inventory requirements of R307-150.

R307-221-2. Definitions and References.

Definitions found in 40 CFR Part 60.751, effective March 12, 1996, are adopted and incorporated by reference, with the exclusion of the definitions of closed landfill, design capacity, and NMOC. The following additional definitions apply to R307-221:

"Closed Landfill" means a landfill in which solid waste is no longer being placed, and in which no additional solid wastes will be placed. A landfill is considered closed after meeting the criteria specified in Subsection R315-301-2(12).

"Design Capacity" means the maximum amount of solid waste a landfill can accept, as specified in an operating permit issued under R307-415 or a solid waste permit issued under Rule R315-310.

"Modification" means an increase in the landfill design capacity through a physical or operational change, as reported in the initial Design Capacity Report.

"NMOC" means nonmethane organic compounds.

R307-221-3. Emission Restrictions.

(1) The requirements found in 40 CFR 60.752 through 60.759, including Appendix A, effective March 12, 1996, are adopted and incorporated by reference, with the following exceptions and the substitutions listed in R307-221-3(2) through (5):

(a) Substitute "executive secretary" for all federal regulation references to "Administrator."

(b) Substitute "State of Utah" for all federal regulation references to "State, local or Tribal agency."

(c) Substitute "R307-221" for all references to "This subpart" or "this part."

(d) Substitute "40 CFR" for all references to "This title."

(e) Substitute "Title 19, Chapter 6" for all references to "RCRA" or the "Resource Conservation and Recovery Act," 42 U.S.C. 6921, et seq.

(f) Substitute "Rules R315-301 through 320" for all references to 40 CFR 258.

(2) Instead of 40 CFR 60.757(a)(1),substitute the following: The initial design capacity report must be submitted within 90 days after the date on which EPA approves the state plan incorporated by reference under R307-220-2.

(3) Instead of 40 CFR 60.757(a)(3), substitute the following: An amended design capacity report shall be submitted to the Executive Secretary providing notification of any increase in the design capacity of the landfill, whether the increase results from an increase in the permitted area or depth of the landfill, a change in the operating procedures, or any other means which results in an increase in the maximum design capacity of the landfill. The amended design capacity report shall be submitted within 90 days of the earliest of the following events:

(a) the issuance of an amended operating permit;

(b) submittal of application for a solid waste permit under R315-310; or

(c) the change in operating procedures which will result in an increase in design capacity.

(4) Instead of 40 CFR 60.757(b)(1)(i), substitute the following: The initial emission rate report for nonmethane organic compounds must be submitted within 90 days after EPA approval of the state plan incorporated by reference under R307-220-2.

(5) Instead of 40 CFR 60.752(b)(2)(ii)(B)(2), substitute the following: The liner shall be installed with liners on the bottom and all sides in all areas in which gas is to be collected, or as approved by the executive secretary. The liner shall meet the requirements of Subsection R315-303-4(3).

R307-221-4. Control Device Specifications.

Control devices meeting the following requirements, shall be used to control collected municipal solid waste landfill emissions:

(1) an open flare designed and operated in accordance with the parameters established in Section 40 CFR Part 60.18, which is adopted and incorporated by reference into this rule; or

(2) a control system designed and operated to reduce nonmethane organic compounds by 98 weight percent; or

(3) an enclosed combustor designed and operated to reduce the outlet nonmethane organic compounds concentration to 20 parts per million as hexane by volume, dry basis at 3 percent oxygen, or less.

R307-221-5. Compliance Schedule.

(1) Except as provided in (2) below, planning, awarding of contracts, and installation of municipal solid waste landfill air emission collection and control equipment capable of meeting the emission standards established under R307-221-3(1) shall be accomplished within 30 months after the date on which EPA approves the state plan incorporated by reference under R307-220-2.

(2) For each existing municipal solid waste landfill meeting the conditions in R307-221-1(2) whose emission rate for nonmethane organic compounds is less than 50 megagrams (55 tons) per year on the date EPA approves the state plan incorporated by reference under R307-220-2, installation of collection and control systems capable of meeting emissions

standards in R307-221-1(2) shall be accomplished within 30 months of the date when the landfill has an emission rate of nonmethane organic compounds of 50 megagrams (55 tons) per year or more.

(3) The owner or operator of each landfill with a design capacity greater than or equal to 2.5 million megagrams (2,755,750 tons) and 2.5 million cubic meters (3,270,000 cubic yards) shall submit by April 1, 1997, an inventory of nonmethane organic compounds. The calculations for this inventory shall use emission factors which obtain the most accurate representation of emissions from the landfill.

(4) The owner or operator of a landfill requiring controls shall notify the executive secretary of the awarding of contracts for the construction of the collection and control system or the order to purchase components for the system. This notification shall be submitted within 18 months after reporting a nonmethane organic compound emission equal to or greater than 50 megagrams (55 tons) per year.

(5) The owner or operator shall notify the executive secretary of the initiation of construction or installation of the collection and control system. This notification shall be submitted to the executive secretary within 22 months after reporting a nonmethane organic compound emission rate equal to or greater than 50 megagrams (55 tons) per year. Landfills with commingled asbestos and municipal solid waste may include the submittals required under R307-214-1 with this notice.

KEY: air pollution, municipal landfills*
January 7, 1999 **19-2-104**

R307. Environmental Quality, Air Quality.
R307-302. Davis, Salt Lake, Utah Counties: Residential Fireplaces and Stoves.
R307-302-1. Definitions.

The following additional definition applies to R307-302:

"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.

R307-302-2. No-Burn Periods for Fine Particulate.

(1) R307-302-2 shall apply only in areas in Utah County which are north of the southernmost border of Payson City, and east of State Route 68, all of Salt Lake County, and areas in Davis County which are south of the southern-most border of Kaysville.

(2) By September 1, 1992, all sole source residential solid fuel burning devices must be registered with the Executive Secretary or local health district office in order to be exempt during mandatory no-burn periods as detailed below.

(3) After September 1, 1992, when the ambient concentration of PM10measured by the monitors in Salt Lake, Davis, or Utah Counties reaches the level of 120 micrograms per cubic meter and the forecasted weather for the specific area includes a temperature inversion which is predicted to continue for at least 24 hours, the Executive Secretary will issue a public announcement and will distribute such announcement to the local media notifying the public that a mandatory no-burn period for residential solid fuel burning devices and fireplaces is in effect. The mandatory no-burn periods will only apply to those areas or counties impacting the real-time monitoring site registering the 120 micrograms per cubic meter concentration. Residents of Salt Lake County or the affected areas of Davis and Utah Counties shall not use residential solid fuel burning devices or fireplaces except those which are the sole source of heat for the entire residence and registered with the Executive Secretary or the local health district office or those having no visible emissions.

(4) PM10 Contingency Plan. If the PM10 Contingency Plan described in Section IX, Part A, of the State Implementation Plan has been implemented, the following actions will be implemented immediately:

(a) The trigger level for no-burn periods as specified in (3) above will be 110 micrograms per cubic meter for that area where the PM10 Contingency Plan has been implemented; and

(b) In Salt Lake, Davis and Utah County nonattainment areas and in any other nonattainment area, it shall be unlawful to sell or install for use as a solid fuel burning device any used solid fuel burning device that is not approved by the Environmental Protection Agency.

(5) After January 1, 1999, when the ambient concentration of PM2.5 measured by the monitors in Salt Lake, Davis, or Utah Counties reaches the level of 52 micrograms per cubic meter and the forecasted weather for the specific area includes a temperature inversion which is predicted to continue for at least 24 hours, the executive secretary will issue a public announcement and will distribute such announcement to the local media notifying the public that a mandatory no-burn period for residential solid fuel burning devices and fireplaces is in effect. The mandatory no-burn periods will only apply to those areas or counties impacting the real-time monitoring site registering the 52 micrograms per cubic meter concentration. Residents of Salt Lake County or the affected areas of Davis and Utah Counties shall not use residential solid fuel burning devices or fireplaces except those which are the sole source of heat for the entire residence and registered with the Executive Secretary or the local health district office or those having no visible emissions.

R307-302-3. No-Burn Periods for Carbon Monoxide.

(1) R307-302-3 shall apply only within the city limits of Provo and Orem in Utah County.

(2) Beginning on November 1 and through March 1 in any years after 1993, the executive secretary will issue a public announcement and will distribute such announcement to the local media notifying the public that a mandatory no-burn period for residential solid fuel burning devices and fireplaces is in effect when the running eight-hour average carbon monoxide concentration as monitored by the state at 4:00 PM reaches a value of 6.0 ppm or more.

(3) In addition to the conditions contained in (2) above, the executive secretary may use meteorological conditions to initiate a no-burn period. These conditions are:

(a) a national weather service forecasted clearing index value of 250 or less;

(b) forecasted wind speeds of three miles per hour or less;

(c) passage of a vigorous cold front through the Wasatch Front; or

(d) arrival of a strong high pressure system into the area.

(4) During the no-burn periods specified in (2) and (3) above, residents of Provo and Orem Cities shall not use residential solid fuel burning devices or fireplaces except those which are the sole source of heat for the entire residence and are registered with the executive secretary or the local health district office, or those having no visible emissions.

R307-302-4. Violations.

It shall be a violation of R307-302 for any person to operate a residential solid fuel burning device or fireplace during the mandatory no-burn periods except as stated in R307-302-2 or 3.

KEY: air pollution, woodburning*, fireplace*, stove*
January 7, 1999 19-2-101
19-2-104

R307. Environmental Quality, Air Quality.
R307-415. Permits: Operating Permit Requirements.
R307-415-1. Purpose.

Title V of the Clean Air Act (the Act) requires states to develop and implement a comprehensive air quality permitting program. Title V of the Act does not impose new substantive requirements. Title V does require that sources subject to R307-415 pay a fee and obtain a renewable operating permit that clarifies, in a single document, which requirements apply to a source and assures the source's compliance with those requirements. The purpose of R307-415 is to establish the procedures and elements of such a program.

R307-415-2. Authority.

R307-415 is required by Title V of the Act and 40 Code of Federal Regulations (CFR) Part 70, and is adopted under the authority of Section 19-2-104.

R307-415-3. Definitions.

(1) The definitions contained in R307-101-2 apply throughout R307-415, except as specifically provided in (2).

(2) The following additional definitions apply to R307-415.

"Act" means the Clean Air Act, as amended, 42 U.S.C. 7401, et seq.

"Administrator" means the Administrator of EPA or his or her designee.

"Affected States" are all states:

(a) Whose air quality may be affected and that are contiguous to Utah; or

(b) That are within 50 miles of the permitted source.

"Air Pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, or radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term air pollutant is used.

"Applicable requirement" means all of the following as they apply to emissions units in a Part 70 source, including requirements that have been promulgated or approved by the Board or by the EPA through rulemaking at the time of permit issuance but have future-effective compliance dates:

(a) Any standard or other requirement provided for in the State Implementation Plan;

(b) Any term or condition of any approval order issued under R307-401;

(c) Any standard or other requirement under Section 111 of the Act, Standards of Performance for New Stationary Sources, including Section 111(d);

(d) Any standard or other requirement under Section 112 of the Act, Hazardous Air Pollutants, including any requirement concerning accident prevention under Section 112(r)(7) of the Act;

(e) Any standard or other requirement of the Acid Rain Program under Title IV of the Act or the regulations promulgated thereunder;

(f) Any requirements established pursuant to Section 504(b) of the Act, Monitoring and Analysis, or Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification;

(g) Any standard or other requirement governing solid waste incineration, under Section 129 of the Act;

(h) Any standard or other requirement for consumer and commercial products, under Section 183(e) of the Act;

(i) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in an operating permit;

(j) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the Act;

(k) Any standard or other requirement under rules adopted by the Board.

"Area source" means any stationary source that is not a major source.

"Designated representative" shall have the meaning given to it in Section 402 of the Act and in 40 CFR Section 72.2, and applies only to Title IV affected sources.

"Draft permit" means the version of a permit for which the Executive Secretary offers public participation under R307-415-7i or affected State review under R307-415-8(2).

"Emissions allowable under the permit" means a federally-enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit, including a work practice standard, or a federally-enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

"Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any hazardous air pollutant. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the Act, Acid Deposition Control.

"Final permit" means the version of an operating permit issued by the Executive Secretary that has completed all review procedures required by R307-415-7a through 7i and R307-415-8.

"General permit" means an operating permit that meets the requirements of R307-415-6d.

"Hazardous Air Pollutant" means any pollutant listed by the Administrator as a hazardous air pollutant under Section 112(b) of the Act.

"Major source" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in paragraphs (a), (b), or (c) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987. Emissions resulting directly from an internal combustion

engine for transportation purposes or from a non-road vehicle shall not be considered in determining whether a stationary source is a major source under this definition.

(a) A major source under Section 112 of the Act, Hazardous Air Pollutants, which is defined as: for pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of such hazardous air pollutants. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well, with its associated equipment, and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

(b) A major stationary source of air pollutants, as defined in Section 302 of the Act, that directly emits or has the potential to emit, 100 tons per year or more of any air pollutant, including any major source of fugitive emissions or fugitive dust of any such pollutant as determined by rule by the Administrator. The fugitive emissions or fugitive dust of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of Section 302(j) of the Act, unless the source belongs to any one of the following categories of stationary source:

(i) Coal cleaning plants with thermal dryers;

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants, furnace process;

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants;

(xxi) Fossil-fuel boilers, or combination thereof, totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(xxvii) All other stationary source categories regulated by a standard promulgated under Section 111 of the Act, Standards of Performance for New Stationary Sources, or Section 112 of the Act, Hazardous Air Pollutants, but only with respect to those air pollutants that have been regulated for that category.

(c) A major stationary source as defined in part D of Title I of the Act, Plan Requirements for Nonattainment Areas, including:

(i) For ozone nonattainment areas, sources with the potential to emit 100 tons per year or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tons per year or more in areas classified as "serious," 25 tons per year or more in areas classified as "severe," and 10 tons per year or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tons per year of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under Section 182(f)(1) or (2) of the Act, that requirements under Section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to Section 184 of the Act, sources with the potential to emit 50 tons per year or more of volatile organic compounds;

(iii) For carbon monoxide nonattainment areas that are classified as "serious" and in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tons per year or more of carbon monoxide;

(iv) For PM-10 particulate matter nonattainment areas classified as "serious," sources with the potential to emit 70 tons per year or more of PM-10 particulate matter.

"Non-Road Vehicle" means a vehicle that is powered by an internal combustion engine (including the fuel system), that is not a self-propelled vehicle designed for transporting persons or property on a street or highway or a vehicle used solely for competition, and is not subject to standards promulgated under Section 111 of the Act (New Source Performance Standards) or Section 202 of the Act (Motor Vehicle Emission Standards).

"Operating permit" or "permit," unless the context suggests otherwise, means any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to these rules.

"Part 70 Source" means any source subject to the permitting requirements of R307-415, as provided in R307-415-4.

"Permit modification" means a revision to an operating permit that meets the requirements of R307-415-7f.

"Permit revision" means any permit modification or administrative permit amendment.

"Permit shield" means the permit shield as described in R307-415-6f.

"Proposed permit" means the version of a permit that the Executive Secretary proposes to issue and forwards to EPA for review in compliance with R307-415-8.

"Renewal" means the process by which a permit is reissued at the end of its term.

"Responsible official" means one of the following:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal

business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) the operating facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million in second quarter 1980 dollars; or

(ii) the delegation of authority to such representative is approved in advance by the Executive Secretary;

(b) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(c) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of R307-415, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency;

(d) For Title IV affected sources:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Act, Acid Deposition Control, or the regulations promulgated thereunder are concerned;

(ii) The responsible official as defined above for any other purposes under R307-415.

"Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any hazardous air pollutant.

"Title IV Affected source" means a source that contains one or more affected units as defined in Section 402 of the Act and in 40 CFR, Part 72.

R307-415-4. Applicability.

(1) Part 70 sources. All of the following sources are subject to the permitting requirements of R307-415, and unless exempted under (2) below are required to submit an application for an operating permit:

(a) Any major source;

(b) Any source, including an area source, subject to a standard, limitation, or other requirement under Section 111 of the Act, Standards of Performance for New Stationary Sources;

(c) Any source, including an area source, subject to a standard or other requirement under Section 112 of the Act, Hazardous Air Pollutants, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under Section 112(r) of the Act, Prevention of Accidental Releases;

(d) Any Title IV affected source.

(2) Source category exemptions. The following source categories are exempted from the requirement to obtain an operating permit.

(a) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters;

(b) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 61, Subpart M - National Emission Standard for Hazardous Air Pollutants for Asbestos, Section 61.145, Standard for Demolition and Renovation. For Part 70 sources, demolition and renovation activities within the source under 40 CFR 61.145 shall be treated as a separate source for the purpose of R307-415.

(3) Emissions units and Part 70 sources.

(a) For major sources, the Executive Secretary shall include in the permit all applicable requirements for all relevant emissions units in the major source.

(b) For any area source subject to the operating permit program under R307-415-4(1) or (2), the Executive Secretary shall include in the permit all applicable requirements applicable to emissions units that cause the source to be subject to the operating permit program.

(4) Fugitive emissions. Fugitive emissions and fugitive dust from a Part 70 source shall be included in the permit application and the operating permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of source categories contained in the definition of major source.

(5) Control requirements. R307-415 does not establish any new control requirements beyond those established by applicable requirements, but may establish new monitoring, recordkeeping, and reporting requirements.

(6) Synthetic minors. An existing source that wishes to avoid designation as a major Part 70 source under R307-415, must obtain federally-enforceable conditions which reduce the potential to emit, as defined in R307-101-2, to less than the level established for a major Part 70 source. Such federally-enforceable conditions may be obtained by applying for and receiving an approval order under R307-401. The approval order shall contain periodic monitoring, recordkeeping, and reporting requirements sufficient to verify continuing compliance with the conditions which would reduce the source's potential to emit.

R307-415-5a. Permit Applications: Duty to Apply.

For each Part 70 source, the owner or operator shall submit a timely and complete permit application. A pre-application conference may be held at the request of a Part 70 source or the Executive Secretary to assist a source in submitting a complete application.

(1) Timely application.

(a) Except as provided in the transition plan under (3) below, a timely application for a source applying for an operating permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program.

(b) Except as provided in the transition plan under (3) below, any Part 70 source required to meet the requirements under Section 112(g) of the Act, Hazardous Air Pollutant Modifications, or required to receive an approval order to construct a new source or modify an existing source under R307-401, shall file a complete application to obtain an operating permit or permit revision within 12 months after commencing operation of the newly constructed or modified source. Where an existing operating permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.

(c) For purposes of permit renewal, a timely application is one that is submitted by the renewal date established in the permit. The Executive Secretary shall establish a renewal date for each permit that is at least six months and not greater than 18 months prior to the date of permit expiration. A source may submit a permit application early for any reason, including timing of other application requirements.

(2) Complete application.

(a) To be deemed complete, an application must provide all information sufficient to evaluate the subject source and its application and to determine all applicable requirements pursuant to R307-415-5c. Applications for permit revision need supply such information only if it is related to the proposed change. A responsible official shall certify the submitted information consistent with R307-415-5d.

(b) Unless the Executive Secretary notifies the source in writing within 60 days of receipt of the application that an application is not complete, such application shall be deemed to be complete. A completeness determination shall not be required for minor permit modifications. If, while processing an application that has been determined or deemed to be complete, the Executive Secretary determines that additional information is necessary to evaluate or take final action on that application, the Executive Secretary may request such information in writing and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in R307-415-7b(2), shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified in writing by the Executive Secretary.

(3) Transition Plan. A timely application under the transition plan is an application that is submitted according to the following schedule:

(a) All Title IV affected sources shall submit an operating permit application as well as an acid rain permit application in accordance with the date required by 40 CFR Part 72 effective April 11, 1995, Subpart C-Acid Rain Permit Applications;

(b) All major Part 70 sources operating as of July 10, 1995, except those described in (a) above, and all solid waste incineration units operating as of July 10, 1995, that are required to obtain an operating permit pursuant to 42 U.S.C. Sec. 7429(e) shall submit a permit application by October 10, 1995.

(c) Area sources.

(i) The Executive Secretary shall develop general permits and application forms for area source categories.

(ii) After a general permit has been issued for a source category, the Executive Secretary shall establish a due date for permit applications from all area sources in that source category.

(iii) The Executive Secretary shall provide at least six months notice that the application is due for a source category.

(iv) Except as provided in (a) and (b) above, all area sources are required to submit a permit application by July 10, 2000, unless required earlier as provided in (ii) above.

(d) Extensions. The owner or operator of any Part 70 source may petition the Executive Secretary for an extension of the application due date for good cause. The due date for major Part 70 sources shall not be extended beyond July 10, 1996. The due date for an area source shall not be extended beyond July 10, 2000.

(e) Application shield. If a source submits a timely and complete application under this transition plan, the application shield under R307-415-7b(2) shall apply to the source. If a source submits a timely application and is making sufficient progress toward correcting an application determined to be incomplete, the Executive Secretary may extend the application shield under R307-415-7b(2) to the source when the application is determined complete. The application shield shall not be extended to any major source that has not submitted a complete application by July 10, 1996, or to any area source that has not submitted a complete application by July 10, 2000.

(f) Permit issuance. The Executive Secretary shall take final action on all complete applications from major Part 70 sources by July 10, 1998.

(4) Confidential information. Claims of confidentiality on information submitted to EPA may be made pursuant to applicable federal requirements. Claims of confidentiality on information submitted to the Department shall be made and governed according to Section 19-1-306. In the case where a source has submitted information to the Department under a claim of confidentiality that also must be submitted to the EPA, the Executive Secretary shall either submit the information to the EPA under Section 19-1-306, or require the source to submit a copy of such information directly to EPA.

(5) Late applications. An application submitted after the deadlines established in R307-415-5a shall be accepted for processing, but shall not be considered a timely application. Submitting an application shall not relieve a source of any enforcement actions resulting from submitting a late application.

R307-415-5b. Permit Applications: Duty to Supplement or Correct Application.

Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

R307-415-5c. Permit Applications: Standard Requirements.

Information as described below for each emissions unit at a Part 70 source shall be included in the application except for insignificant activities and emissions levels under R307-415-5e. The operating permit application shall include the elements specified below:

(1) Identifying information, including company name, company address, plant name and address if different from the company name and address, owner's name and agent, and telephone number and names of plant site manager or contact.

(2) A description of the source's processes and products by Standard Industrial Classification Code, including any associated with each alternate scenario identified by the source.

(3) The following emissions-related information:

(a) A permit application shall describe the potential to emit of all air pollutants for which the source is major, and the potential to emit of all regulated air pollutants and hazardous air

pollutants from any emissions unit, except for insignificant activities and emissions under R307-415-5e. For emissions of hazardous air pollutants under 1,000 pounds per year, the following ranges may be used in the application: 1-10 pounds per year, 11-499 pounds per year, 500-999 pounds per year. The mid-point of the range shall be used to calculate the emission fee under R307-415-9 for hazardous air pollutants reported as a range.

(b) Identification and description of all points of emissions described in (a) above in sufficient detail to establish the basis for fees and applicability of applicable requirements.

(c) Emissions rates in tons per year and in such terms as are necessary to establish compliance with applicable requirements consistent with the applicable standard reference test method.

(d) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.

(e) Identification and description of air pollution control equipment and compliance monitoring devices or activities.

(f) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants and hazardous air pollutants at the Part 70 source.

(g) Other information required by any applicable requirement, including information related to stack height limitations developed pursuant to Section 123 of the Act.

(h) Calculations on which the information in items (a) through (g) above is based.

(4) The following air pollution control requirements:

(a) Citation and description of all applicable requirements, and

(b) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

(5) Other specific information that may be necessary to implement and enforce applicable requirements or to determine the applicability of such requirements.

(6) An explanation of any proposed exemptions from otherwise applicable requirements.

(7) Additional information as determined to be necessary by the Executive Secretary to define alternative operating scenarios identified by the source pursuant to R307-415-6a(9) or to define permit terms and conditions implementing emission trading under R307-415-7d(1)(c) or R307-415-6a(10).

(8) A compliance plan for all Part 70 sources that contains all of the following:

(a) A description of the compliance status of the source with respect to all applicable requirements.

(b) A description as follows:

(i) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(ii) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

(iii) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

(c) A compliance schedule as follows:

(i) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(ii) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

(iii) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

(d) A schedule for submission of certified progress reports every six months, or more frequently if specified by the underlying applicable requirement or by the Executive Secretary, for sources required to have a schedule of compliance to remedy a violation.

(e) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for a Title IV affected source, except as specifically superseded by regulations promulgated under Title IV of the Act, Acid Deposition Control, with regard to the schedule and methods the source will use to achieve compliance with the acid rain emissions limitations.

(9) Requirements for compliance certification, including all of the following:

(a) A certification of compliance with all applicable requirements by a responsible official consistent with R307-415-5d and Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification.

(b) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test method.

(c) A schedule for submission of compliance certifications during the permit term, to be submitted annually, or more frequently if specified by the underlying applicable requirement or by the Executive Secretary.

(d) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(10) Nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act, Acid Deposition Control.

R307-415-5d. Permit Applications: Certification.

Any application form, report, or compliance certification submitted pursuant to R307-415 shall contain certification by a

responsible official of truth, accuracy, and completeness. This certification and any other certification required under R307-415 shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

R307-415-5e. Permit Applications: Insignificant Activities and Emissions.

An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under R307-415-9. The following lists apply only to operating permit applications and do not affect the applicability of R307-415 to a source, do not affect the requirement that a source receive an approval order under R307-401, and do not relieve a source of the responsibility to comply with any applicable requirement.

(1) The following insignificant activities and emission levels are not required to be included in the permit application.

(a) Exhaust systems for controlling steam and heat that do not contain combustion products, except for systems that are subject to an emission standard under any applicable requirement.

(b) Air contaminants that are present in process water or non-contact cooling water as drawn from the environment or from municipal sources, or air contaminants that are present in compressed air or in ambient air, which may contain air pollution, used for combustion.

(c) Air conditioning or ventilating systems not designed to remove air contaminants generated by or released from other processes or equipment.

(d) Disturbance of surface areas for purposes of land development, not including mining operations or the disturbance of contaminated soil.

(e) Brazing, soldering, or welding operations.

(f) Aerosol can usage.

(g) Road and parking lot paving operations, not including asphalt, sand and gravel, and cement batch plants.

(h) Fire training activities that are not conducted at permanent fire training facilities.

(i) Landscaping, janitorial, and site housekeeping activities, including fugitive emissions from landscaping activities.

(j) Architectural painting.

(k) Office emissions, including cleaning, copying, and restrooms.

(l) Wet wash aggregate operations that are solely dedicated to this process.

(m) Air pollutants that are emitted from personal use by employees or other persons at the source, such as foods, drugs, or cosmetics.

(n) Air pollutants that are emitted by a laboratory at a facility under the supervision of a technically qualified individual as defined in 40 CFR 720.3(ee); however, this exclusion does not apply to specialty chemical production, pilot plant scale operations, or activities conducted outside the laboratory.

(o) Maintenance on petroleum liquid handling equipment such as pumps, valves, flanges, and similar pipeline devices and appurtenances when purged and isolated from normal operations.

(p) Portable steam cleaning equipment.

(q) Vents on sanitary sewer lines.

(r) Vents on tanks containing no volatile air pollutants, e.g., any petroleum liquid, not containing Hazardous Air Pollutants, with a Reid Vapor Pressure less than 0.05 psia.

(2) The following insignificant activities are exempted because of size or production rate and a list of such insignificant activities must be included in the application. The Executive Secretary may require information to verify that the activity is insignificant.

(a) Emergency heating equipment, using coal, wood, kerosene, fuel oil, natural gas, or LPG for fuel, with a rated capacity less than 50,000 BTU per hour.

(b) Individual emissions units having the potential to emit less than one ton per year per pollutant of PM10 particulate matter, nitrogen oxides, sulfur dioxide, volatile organic compounds, or carbon monoxide, unless combined emissions from similar small emission units located within the same Part 70 source are greater than five tons per year of any one pollutant. This does not include emissions units that emit air contaminants other than PM10 particulate matter, nitrogen oxides, sulfur dioxide, volatile organic compounds, or carbon monoxide.

(c) Petroleum industry flares, not associated with refineries, combusting natural gas containing no hydrogen sulfide except in amounts less than 500 parts per million by weight, and having the potential to emit less than five tons per year per air contaminant.

(d) Road sweeping.

(e) Road salting and sanding.

(f) Unpaved public and private roads, except unpaved haul roads located within the boundaries of a stationary source. A haul road means any road normally used to transport people, livestock, product or material by any type of vehicle.

(g) Non-commercial automotive (car and truck) service stations dispensing less than 6,750 gal. of gasoline/month

(h) Hazardous Air Pollutants present at less than 1% concentration, or 0.1% for a carcinogen, in a mixture used at a rate of less than 50 tons per year, provided that a National Emission Standards for Hazardous Air Pollutants standard does not specify otherwise.

(i) 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 distributed by a public utility.

(j) Comfort heating equipment (i.e., 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.

(3) Any person may petition the Board to add an activity or emission to the list of Insignificant Activities and Emissions which may be excluded from an operating permit application under (1) or (2) above upon a change in the rule and approval of the rule change by EPA. The petition shall include the following information:

(a) A complete description of the activity or emission to be added to the list.

(b) A complete description of all air contaminants that may be emitted by the activity or emission, including emission rate, air pollution control equipment, and calculations used to determine emissions.

(c) An explanation of why the activity or emission should be exempted from the application requirements for an operating permit.

(4) The executive secretary may determine on a case-by-case basis, insignificant activities and emissions for an individual Part 70 source that may be excluded from an application or that must be listed in the application, but do not require a detailed description. No activity with the potential to emit greater than two tons per year of any criteria pollutant, five tons of a combination of criteria pollutants, 500 pounds of any hazardous air pollutant or one ton of a combination of hazardous air pollutants shall be eligible to be determined an insignificant activity or emission under this subsection (4).

R307-415-6a. Permit Content: Standard Requirements.

Each permit issued under R307-415 shall include the following elements:

(1) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance;

(a) The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

(b) The permit shall state that, where an applicable requirement is more stringent than an applicable requirement of regulations promulgated under Title IV of the Act, Acid Deposition Control, both provisions shall be incorporated into the permit.

(c) If the State Implementation Plan allows a determination of an alternative emission limit at a Part 70 source, equivalent to that contained in the State Implementation Plan, to be made in the permit issuance, renewal, or significant modification process, and the Executive Secretary elects to use such process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(2) Permit duration. Except as provided by Section 19-2-109.1(3), the Executive Secretary shall issue permits for a fixed term of five years.

(3) Monitoring and related recordkeeping and reporting requirements.

(a) Each permit shall contain the following requirements with respect to monitoring:

(i) All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to Sections 504(b) of the Act, Monitoring and Analysis, or Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification;

(ii) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring, which may consist of recordkeeping designed to serve as monitoring, periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to (3)(c) below. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph;

(iii) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(b) With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

(i) Records of required monitoring information that include the following:

(A) The date, place as defined in the permit, and time of sampling or measurements;

(B) The dates analyses were performed;

(C) The company or entity that performed the analyses;

(D) The analytical techniques or methods used;

(E) The results of such analyses;

(F) The operating conditions as existing at the time of sampling or measurement;

(ii) Retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(c) With respect to reporting, the permit shall incorporate all applicable reporting requirements and require all of the following:

(i) Submittal of reports of any required monitoring every six months, or more frequently if specified by the underlying applicable requirement or by the Executive Secretary. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with R307-415-5d.

(ii) Prompt reporting of deviations from permit requirements including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The Executive Secretary shall define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements. Deviations from permit requirements due to unavoidable breakdowns shall be reported according to the unavoidable breakdown provisions of R307-107. The Executive Secretary may establish more stringent reporting deadlines if required by the applicable requirement.

(d) Claims of confidentiality shall be governed by Section 19-1-306.

(4) Acid Rain Allowances. For Title IV affected sources, a permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the Act or the regulations promulgated thereunder.

(a) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the Acid Rain Program, provided that such increases do not

require a permit revision under any other applicable requirement.

(b) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(c) Any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Act.

(5) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

(6) Standard provisions stating the following:

(a) The permittee must comply with all conditions of the operating permit. Any permit noncompliance constitutes a violation of the Air Conservation Act and is grounds for any of the following: enforcement action; permit termination; revocation and reissuance; modification; denial of a permit renewal application.

(b) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(c) The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition, except as provided under R307-415-7f(1) for minor permit modifications.

(d) The permit does not convey any property rights of any sort, or any exclusive privilege.

(e) The permittee shall furnish to the Executive Secretary, within a reasonable time, any information that the Executive Secretary may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Executive Secretary copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to EPA along with a claim of confidentiality.

(7) Emission fee. A provision to ensure that a Part 70 source pays fees to the Executive Secretary consistent with R307-415-9.

(8) Emissions trading. A provision stating that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

(9) Alternate operating scenarios. Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the Executive Secretary. Such terms and conditions:

(a) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;

(b) Shall extend the permit shield to all terms and conditions under each such operating scenario; and

(c) Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of R307-415.

(10) Emissions trading. Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

(a) Shall include all terms required under R307-415-6a and 6c to determine compliance;

(b) Shall extend the permit shield to all terms and conditions that allow such increases and decreases in emissions; and

(c) Must meet all applicable requirements and requirements of R307-415.

R307-415-6b. Permit Content: Federally-Enforceable Requirements.

(1) All terms and conditions in an operating permit, including any provisions designed to limit a source's potential to emit, are enforceable by EPA and citizens under the Act.

(2) Notwithstanding (1) above, applicable requirements that are not required by the Act or implementing federal regulations shall be included in the permit but shall be specifically designated as being not federally enforceable under the Act and shall be designated as "state requirements." Terms and conditions so designated are not subject to the requirements of R307-415-7a through 7i and R307-415-8 that apply to permit review by EPA and affected states. The Executive Secretary shall determine which conditions are "state requirements" in each operating permit.

R307-415-6c. Permit Content: Compliance Requirements.

All operating permits shall contain all of the following elements with respect to compliance:

(1) Consistent with R307-415-6a(3), compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document, including any report, required by an operating permit shall contain a certification by a responsible official that meets the requirements of R307-415-5d;

(2) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the Executive Secretary or an authorized representative to perform any of the following:

(a) Enter upon the permittee's premises where a Part 70 source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(c) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit;

(d) Sample or monitor at reasonable times substances or

parameters for the purpose of assuring compliance with the permit or applicable requirements;

(e) Claims of confidentiality on the information obtained during an inspection shall be made pursuant to Section 19-1-306;

(3) A schedule of compliance consistent with R307-415-5c(8);

(4) Progress reports consistent with an applicable schedule of compliance and R307-415-5c(8) to be submitted semiannually, or at a more frequent period if specified in the applicable requirement or by the Executive Secretary. Such progress reports shall contain all of the following:

(a) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved;

(b) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted;

(5) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include all of the following:

(a) Annual submission of compliance certification, or more frequently if specified in the applicable requirement or by the Executive Secretary;

(b) In accordance with R307-415-6a(3), a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

(c) A requirement that the compliance certification include all of the following:

(i) The identification of each term or condition of the permit that is the basis of the certification;

(ii) The compliance status;

(iii) Whether compliance was continuous or intermittent;

(iv) The methods used for determining the compliance status of the source, currently and over the reporting period consistent with R307-415-6a(3);

(v) Such other facts as the Executive Secretary may require to determine the compliance status of the source;

(d) A requirement that all compliance certifications be submitted to the EPA as well as to the Executive Secretary;

(e) Such additional requirements as may be specified pursuant to Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification, and Section 504(b) of the Act, Monitoring and Analysis;

(6) Such other provisions as the Executive Secretary may require.

R307-415-6d. Permit Content: General Permits.

(1) The Executive Secretary may, after notice and opportunity for public participation provided under R307-415-7i, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other operating permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the Executive Secretary shall grant the conditions and terms of the general permit. Notwithstanding the permit shield, the source shall be subject to enforcement action for operation without an operating permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be issued for Title IV affected sources under the Acid Rain Program unless otherwise provided in regulations promulgated under Title IV of the Act.

(2) Part 70 sources that would qualify for a general permit must apply to the Executive Secretary for coverage under the terms of the general permit or must apply for an operating permit consistent with R307-415-5a through 5e. The Executive Secretary may, in the general permit, provide for applications which deviate from the requirements of R307-415-5a through 5e, provided that such applications meet the requirements of Title V of the Act, and include all information necessary to determine qualification for, and to assure compliance with, the general permit. Without repeating the public participation procedures required under R307-415-7i, the Executive Secretary may grant a source's request for authorization to operate under a general permit, but such a grant to a qualified source shall not be a final permit action for purposes of judicial review.

R307-415-6e. Permit Content: Temporary Sources.

The owner or operator of a permitted source may temporarily relocate the source for a period not to exceed that allowed by R307-401-7. A permit modification is required to relocate the source for a period longer than that allowed by R307-401-7. No Title IV affected source may be permitted as a temporary source. Permits for temporary sources shall include all of the following:

(1) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(2) Requirements that the owner or operator receive approval to relocate under R307-401-7 before operating at the new location;

(3) Conditions that assure compliance with all other provisions of R307-415.

R307-415-6f. Permit Content: Permit Shield.

(1) Except as provided in R307-415, the Executive Secretary shall include in each operating permit a permit shield provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(a) Such applicable requirements are included and are specifically identified in the permit; or

(b) The Executive Secretary, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(2) An operating permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(3) Nothing in this paragraph or in any operating permit shall alter or affect any of the following:

(a) The emergency provisions of Section 19-1-202 and Section 19-2-112, and the provisions of Section 303 of the Act, Emergency Orders, including the authority of the Administrator under that Section;

(b) The liability of an owner or operator of a source for any violation of applicable requirements under Section 19-2-

107(2)(g) and Section 19-2-110 prior to or at the time of permit issuance;

(c) The applicable requirements of the Acid Rain Program, consistent with Section 408(a) of the Act;

(d) The ability of the Executive Secretary to obtain information from a source under Section 19-2-120, and the ability of EPA to obtain information from a source under Section 114 of the Act, Inspection, Monitoring, and Entry.

R307-415-6g. Permit Content: Emergency Provision.

(1) Emergency. An "emergency" is any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) Effect of an emergency. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of (3) below are met.

(3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) An emergency occurred and that the permittee can identify the causes of the emergency;

(b) The permitted facility was at the time being properly operated;

(c) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

(d) The permittee submitted notice of the emergency to the Executive Secretary within two working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of R307-415-6a(3)(c)(ii). This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(4) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(5) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

R307-415-7a. Permit Issuance: Action on Application.

(1) A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

(a) The Executive Secretary has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit;

(b) Except for modifications qualifying for minor permit modification procedures under R307-415-7f(1)and (2), the Executive Secretary has complied with the requirements for public participation under R307-415-7i;

(c) The Executive Secretary has complied with the requirements for notifying and responding to affected States under R307-415-8(2);

(d) The conditions of the permit provide for compliance with all applicable requirements and the requirements of R307-415;

(e) EPA has received a copy of the proposed permit and any notices required under R307-415-8(1) and (2), and has not objected to issuance of the permit under R307-415-8(3) within the time period specified therein.

(2) Except as provided under the initial transition plan provided for under R307-415-5a(3) or under regulations promulgated under Title IV of the Act for the permitting of Title IV affected sources under the Acid Rain Program, the Executive Secretary shall take final action on each permit application, including a request for permit modification or renewal, within 18 months after receiving a complete application.

(3) The Executive Secretary shall promptly provide notice to the applicant of whether the application is complete. Unless the Executive Secretary requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. A completeness determination shall not be required for minor permit modifications.

(4) The Executive Secretary shall provide a statement that sets forth the legal and factual basis for the draft permit conditions, including references to the applicable statutory or regulatory provisions. The Executive Secretary shall send this statement to EPA and to any other person who requests it.

(5) The submittal of a complete application shall not affect the requirement that any source have an approval order under R307-401.

R307-415-7b. Permit Issuance: Requirement for a Permit.

(1) Except as provided in R307-415-7d and R307-415-7f(1)(f)and 7f(2)(e), no Part 70 source may operate after the time that it is required to submit a timely and complete application, except in compliance with a permit issued under these rules.

(2) Application shield. If a Part 70 source submits a timely and complete application for permit issuance, including for renewal, the source's failure to have an operating permit is not a violation of R307-415 until the Executive Secretary takes final action on the permit application. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to R307-415-7a(3), and as required by R307-415-5a(2), the applicant fails to submit by the deadline specified in writing by the Executive Secretary any additional information identified as being needed to process the application.

R307-415-7c. Permit Renewal and Expiration.

(1) Permits being renewed are subject to the same procedural requirements, including those for public participation, affected State and EPA review, that apply to initial permit issuance.

(2) Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with R307-415-7b and R307-415-5a(1)(c).

(3) If a timely and complete renewal application is

submitted consistent with R307-415-7b and R307-415-5a(1)(c)and the Executive Secretary fails to issue or deny the renewal permit before the end of the term of the previous permit, then all of the terms and conditions of the permit, including the permit shield, shall remain in effect until renewal or denial.

R307-415-7d. Permit Revision: Changes That Do Not Require a Revision.

(1) Operational Flexibility.

(a) A Part 70 source may make changes that contravene an express permit term if all of the following conditions have been met:

(i) The source has obtained an approval order, or has met the exemption requirements under R307-402;

(ii) The change would not violate any applicable requirements or contravene any federally enforceable permit terms and conditions for monitoring, including test methods, recordkeeping, reporting, or compliance certification requirements;

(iii) The changes are not modifications under any provision of Title I of the Act; and the changes do not exceed the emissions allowable under the permit, whether expressed therein as a rate of emissions or in terms of total emissions.

(iv) For each such change, the source shall provide written notice to the Executive Secretary and send a copy of the notice to EPA at least seven days before implementing the proposed change. The seven-day requirement may be waived by the Executive Secretary in the case of an emergency. The written notification shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change. The permit shield shall not apply to these changes. The source, the EPA, and the Executive Secretary shall attach each such notice to their copy of the relevant permit.

(b) Emission trading under the State Implementation Plan. Permitted sources may trade increases and decreases in emissions in the permitted facility, where the State Implementation Plan provides for such emissions trades, without requiring a permit revision provided the change is not a modification under any provision of Title I of the Act, the change does not exceed the emissions allowable under the permit, and the source notifies the Executive Secretary and the EPA at least seven days in advance of the trade. This provision is available in those cases where the permit does not already provide for such emissions trading.

(i) The written notification required above shall include such information as may be required by the provision in the State Implementation Plan authorizing the emissions trade, including at a minimum, when the proposed change will occur, a description of each such change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the State Implementation Plan, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in the State Implementation Plan and that provide for the emissions trade.

(ii) The permit shield shall not extend to any change made under this paragraph. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the State Implementation Plan authorizing the emissions trade.

(c) If a permit applicant requests it, the Executive Secretary shall issue permits that contain terms and conditions, including all terms required under R307-415-6a and 6c to determine compliance, allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. Such changes in emissions shall not be allowed if the change is a modification under any provision of Title I of the Act or the change would exceed the emissions allowable under the permit. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The Executive Secretary shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements, and shall require the source to notify the Executive Secretary and the EPA in writing at least seven days before making the emission trade.

(i) The written notification shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(ii) The permit shield shall extend to terms and conditions that allow such increases and decreases in emissions.

(2) Off-permit changes. A Part 70 source may make changes that are not addressed or prohibited by the permit without a permit revision, unless such changes are subject to any requirements under Title IV of the Act or are modifications under any provision of Title I of the Act.

(a) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition.

(b) Sources must provide contemporaneous written notice to the Executive Secretary and EPA of each such change, except for changes that qualify as insignificant under R307-415-5e. Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirements that would apply as a result of the change.

(c) The change shall not qualify for the permit shield.

(d) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

(e) The off-permit provisions do not affect the requirement for a source to obtain an approval order under R307-401.

R307-415-7e. Permit Revision: Administrative Amendments.

(1) An "administrative permit amendment" is a permit revision that:

(a) Corrects typographical errors;

(b) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

(c) Requires more frequent monitoring or reporting by the permittee;

(d) Allows for a change in ownership or operational control of a source where the Executive Secretary determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Executive Secretary;

(e) Incorporates into the operating permit the requirements from an approval order issued under R307-401, provided that the procedures for issuing the approval order were substantially equivalent to the permit issuance or modification procedures of R307-415-7a through 7i and R307-415-8, and compliance requirements are substantially equivalent to those contained in R307-415-6a through 6g;

(2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Act.

(3) Administrative permit amendment procedures. An administrative permit amendment may be made by the Executive Secretary consistent with the following:

(a) The Executive Secretary shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected States provided that the Executive Secretary designates any such permit revisions as having been made pursuant to this paragraph. The Executive Secretary shall take final action on a request for a change in ownership or operational control of a source under (1)(d) above within 30 days of receipt of a request.

(b) The Executive Secretary shall submit a copy of the revised permit to EPA.

(c) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(4) The Executive Secretary shall, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield for administrative permit amendments made pursuant to (1)(e) above which meet the relevant requirements of R307-415-6a through 6g, 7 and 8 for significant permit modifications.

R307-415-7f. Permit Revision: Modification.

The permit modification procedures described in R307-415-7f shall not affect the requirement that a source obtain an approval order under R307-401 before constructing or modifying a source of air pollution. A modification not subject to the requirements of R307-401 shall not require an approval order in addition to the permit modification as described in this section. A permit modification is any revision to an operating permit that cannot be accomplished under the program's provisions for administrative permit amendments under R307-415-7e. Any permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Act.

(1) Minor permit modification procedures.

(a) Criteria. Minor permit modification procedures may be used only for those permit modifications that:

(i) Do not violate any applicable requirement or require an approval order under R307-401;

(ii) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

(iii) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(iv) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such term or condition would include a federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I or an alternative emissions limit approved pursuant to regulations promulgated under Section 112(i)(5) of the Act, Early Reduction; and

(v) Are not modifications under any provision of Title I of the Act.

(b) Notwithstanding (1)(a)above and (2)(a) below, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the State Implementation Plan or an applicable requirement.

(c) Application. An application requesting the use of minor permit modification procedures shall meet the requirements of R307-415-5c and shall include all of the following:

(i) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(ii) The source's suggested draft permit;

(iii) Certification by a responsible official, consistent with R307-415-5d, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used;

(iv) Completed forms for the Executive Secretary to use to notify EPA and affected States as required under R307-415-8.

(d) EPA and affected State notification. Within five working days of receipt of a complete permit modification application, the Executive Secretary shall notify EPA and affected States of the requested permit modification. The Executive Secretary promptly shall send any notice required under R307-415-8(2)(b) to EPA.

(e) Timetable for issuance. The Executive Secretary may not issue a final permit modification until after EPA's 45-day review period or until EPA has notified the Executive Secretary that EPA will not object to issuance of the permit modification, whichever is first. Within 90 days of the Executive Secretary's receipt of an application under minor permit modification procedures or 15 days after the end of EPA's 45-day review period under R307-415-8(3), whichever is later, the Executive

Secretary shall:

(i) Issue the permit modification as proposed;

(ii) Deny the permit modification application;

(iii) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

(iv) Revise the draft permit modification and transmit to EPA the new proposed permit modification as required by R307-415-8(1).

(f) Source's ability to make change. A Part 70 source may make the change proposed in its minor permit modification application immediately after it files such application if the source has received an approval order under R307-401 or has met the approval order exemption requirements under R307-413-1 through 6. After the source makes the change allowed by the preceding sentence, and until the Executive Secretary takes any of the actions specified in (1)(e)(i) through (iii) above, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(g) Permit shield. The permit shield under R307-415-6f shall not extend to minor permit modifications.

(2) Group processing of minor permit modifications. Consistent with this paragraph, the Executive Secretary may modify the procedure outlined in (1) above to process groups of a source's applications for certain modifications eligible for minor permit modification processing.

(a) Criteria. Group processing of modifications may be used only for those permit modifications:

(i) That meet the criteria for minor permit modification procedures under (1)(a) above; and

(ii) That collectively are below the following threshold level: 10 percent of the emissions allowed by the permit for the emissions unit for which the change is requested, 20 percent of the applicable definition of major source in R307-415-3, or five tons per year, whichever is least.

(b) Application. An application requesting the use of group processing procedures shall meet the requirements of R307-415-5c and shall include the following:

(i) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

(ii) The source's suggested draft permit.

(iii) Certification by a responsible official, consistent with R307-415-5d, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.

(iv) A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under R307-415-7e(2)(a)(ii).

(v) Certification, consistent with R307-415-5d, that the source has notified EPA of the proposed modification. Such notification need only contain a brief description of the requested modification.

(vi) Completed forms for the Executive Secretary to use to notify EPA and affected States as required under R307-415-8.

(c) EPA and affected State notification. On a quarterly basis or within five business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under (2)(a)(ii) above, whichever is earlier, the Executive Secretary shall notify EPA and affected States of the requested permit modifications. The Executive Secretary shall send any notice required under R307-415-8(2)(b)to EPA.

(d) Timetable for issuance. The provisions of (1)(e) above shall apply to modifications eligible for group processing, except that the Executive Secretary shall take one of the actions specified in (1)(e)(i) through (iv) above within 180 days of receipt of the application or 15 days after the end of EPA's 45-day review period under R307-415-8(3), whichever is later.

(e) Source's ability to make change. The provisions of (1)(f) above shall apply to modifications eligible for group processing.

(f) Permit shield. The provisions of (1)(g) above shall also apply to modifications eligible for group processing.

(3) Significant modification procedures.

(a) Criteria. Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications or as administrative amendments. Every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall be considered significant. Nothing herein shall be construed to preclude the permittee from making changes consistent with R307-415 that would render existing permit compliance terms and conditions irrelevant.

(b) Significant permit modifications shall meet all requirements of R307-415, including those for applications, public participation, review by affected States, and review by EPA, as they apply to permit issuance and permit renewal. The Executive Secretary shall complete review on the majority of significant permit modifications within nine months after receipt of a complete application.

R307-415-7g. Permit Revision: Reopening for Cause.

(1) Each issued permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

(a) New applicable requirements become applicable to a major Part 70 source with a remaining permit term of three or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the terms and conditions of the permit have been extended pursuant to R307-415-7c(3).

(b) Additional requirements, including excess emissions requirements, become applicable to an Title IV affected source under the Acid Rain Program. Upon approval by EPA, excess emissions offset plans shall be deemed to be incorporated into

the permit.

(c) The Executive Secretary or EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

(d) EPA or the Executive Secretary determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(e) Additional applicable requirements are to become effective before the renewal date of the permit and are in conflict with existing permit conditions.

(2) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

(3) Reopenings under (1) above shall not be initiated before a notice of such intent is provided to the Part 70 source by the Executive Secretary at least 30 days in advance of the date that the permit is to be reopened, except that the Executive Secretary may provide a shorter time period in the case of an emergency.

R307-415-7h. Permit Revision: Reopenings for Cause by EPA.

The Executive Secretary shall, within 90 days after receipt of notification that EPA finds that cause exists to terminate, modify or revoke and reissue a permit, forward to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Executive Secretary may request a 90-day extension if a new or revised permit application is necessary or if the Executive Secretary determines that the permittee must submit additional information.

R307-415-7i. Public Participation.

The Executive Secretary shall provide for public notice, comment and an opportunity for a hearing on initial permit issuance, significant modifications, reopenings for cause, and renewals, including the following procedures:

(1) Notice shall be given: by publication in a newspaper of general circulation in the area where the source is located; to persons on a mailing list developed by the Executive Secretary, including those who request in writing to be on the list; and by other means if necessary to assure adequate notice to the affected public.

(2) The notice shall identify the Part 70 source; the name and address of the permittee; the name and address of the Executive Secretary; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including any compliance plan or compliance and monitoring certification, and all other materials available to the Executive Secretary that are relevant to the permit decision; a brief description of the comment procedures; and the time and place of any hearing that may be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled.

(3) The Executive Secretary shall provide such notice and opportunity for participation by affected States as is provided for by R307-415-8.

(4) Timing. The Executive Secretary shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing.

(5) The Executive Secretary shall keep a record of the commenters and also of the issues raised during the public participation process, and such records shall be available to the public and to EPA.

R307-415-8. Permit Review by EPA and Affected States.

(1) Transmission of information to EPA.

(a) The Executive Secretary shall provide to EPA a copy of each permit application, including any application for permit modification, each proposed permit, and each final operating permit, unless the Administrator has waived this requirement for a category of sources, including any class, type, or size within such category. The applicant may be required by the Executive Secretary to provide a copy of the permit application, including the compliance plan, directly to EPA. Upon agreement with EPA, the Executive Secretary may submit to EPA a permit application summary form and any relevant portion of the permit application and compliance plan, in place of the complete permit application and compliance plan. To the extent practicable, the preceding information shall be provided in computer-readable format compatible with EPA's national database management system.

(b) The Executive Secretary shall keep for five years such records and submit to EPA such information as EPA may reasonably require to ascertain whether the Operating Permit Program complies with the requirements of the Act or of 40 CFR Part 70.

(2) Review by affected States.

(a) The Executive Secretary shall give notice of each draft permit to any affected State on or before the time that the Executive Secretary provides this notice to the public under R307-415-7i, except to the extent R307-415-7f(1) or (2) requires the timing to be different, unless the Administrator has waived this requirement for a category of sources, including any class, type, or size within such category.

(b) The Executive Secretary, as part of the submittal of the proposed permit to EPA, or as soon as possible after the submittal for minor permit modification procedures allowed under R307-415-7f(1) or (2), shall notify EPA and any affected State in writing of any refusal by the Executive Secretary to accept all recommendations for the proposed permit that the affected State submitted during the public or affected State review period. The notice shall include the Executive Secretary's reasons for not accepting any such recommendation. The Executive Secretary is not required to accept recommendations that are not based on applicable requirements or the requirements of R307-415.

(3) EPA objection. If EPA objects to the issuance of a permit in writing within 45 days of receipt of the proposed permit and all necessary supporting information, then the Executive Secretary shall not issue the permit. If the Executive Secretary fails, within 90 days after the date of an objection by

EPA, to revise and submit a proposed permit in response to the objection, EPA may issue or deny the permit in accordance with the requirements of the Federal program promulgated under Title V of the Act.

(4) Public petitions to EPA. If EPA does not object in writing under R307-415-8(3), any person may petition EPA under the provisions of 40 CFR 70.8(d) within 60 days after the expiration of EPA's 45-day review period to make such objection. If EPA objects to the permit as a result of a petition, the Executive Secretary shall not issue the permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an EPA objection. If the Executive Secretary has issued a permit prior to receipt of an EPA objection under this paragraph, EPA may modify, terminate, or revoke such permit, consistent with the procedures in 40 CFR 70.7(g) except in unusual circumstances, and the Executive Secretary may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

(5) Prohibition on default issuance. The Executive Secretary shall not issue an operating permit, including a permit renewal or modification, until affected States and EPA have had an opportunity to review the proposed permit as required under this Section.

R307-415-9. Fees for Operating Permits.

(1) Definitions. The following definitions apply only to R307-415-9.

(a) "Allowable emissions" are emissions based on the potential to emit stated by the Executive Secretary in an approval order, the State Implementation Plan or an operating permit.

(b) "Chargeable pollutant" means any "regulated air pollutant" except the following:

(i) carbon monoxide;

(ii) any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated or established by Title VI of the Act, Stratospheric Ozone Protection;

(iii) any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under Section 112(r) of the Act, Prevention of Accidental Releases.

(2) Applicability. As authorized by Section 19-2-109.1, all Part 70 sources must pay an annual fee, based on annual emissions of all chargeable pollutants.

(a) Any Title IV affected source that has been designated as a "Phase I Unit" in a substitution plan approved by the Administrator under 40 CFR Section 72.41 shall be exempted from the requirement to pay an emission fee from January 1, 1995 to December 31, 1999.

(3) Calculation of Annual Emission Fee for a Part 70 Source.

(a) The emission fee shall be calculated for all chargeable pollutants emitted from a Part 70 major source, even if only one unit or one chargeable pollutant triggers the applicability of R307-415 to the source.

(i) Fugitive emissions and fugitive dust shall be counted when determining the emission fee for a Part 70 source.

(ii) An emission fee shall not be charged for emissions of any amount of a chargeable pollutant if the emissions are already accounted for within the emissions of another chargeable pollutant.

(iii) An emission fee shall not be charged for emissions of any one chargeable pollutant from any one Part 70 source in excess of 4,000 tons per year.

(iv) Emissions resulting directly from an internal combustion engine for transportation purposes or from a non-road vehicle shall not be counted when calculating chargeable emissions for a Part 70 source.

(b) The emission fee for an existing source prior to the issuance of an operating permit, shall be based on the most recent emission inventory available unless a Part 70 source elected, prior to July 1, 1992, to base the fee for one or more pollutants on allowable emissions established in an approval order or the State Implementation Plan.

(c) The emission fee after the issuance or renewal of an operating permit shall be based on the most recent emission inventory available unless a Part 70 source elects, prior to the issuance or renewal of the permit, to base the fee for one or more chargeable pollutants on allowable emissions for the entire term of the permit.

(d) When a new Part 70 source begins operating, it shall pay an emission fee for that fiscal year, prorated from the date the source begins operating. The emission fee for a new Part 70 source shall be based on allowable emissions until that source has been in operation for a full calendar year, and has submitted an inventory of actual emissions.

(e) When a Part 70 source ceases operation, is redesignated as a non-Part 70 source, or is otherwise exempted from the emission fee requirements, the emission fee shall be prorated to the date that the source ceased operation or was reclassified. If the Part 70 source has already paid an emission fee that is greater than the prorated fee, the balance will be credited to the source's account, but will not be refunded. When that Part 70 source resumes operation or again becomes subject to the emission fee requirements, it shall pay an emission fee for that fiscal year prorated from the date the source resumed operation or was reclassified. The fee shall be based on the emission inventory during the last full year of operation for that Part 70 source minus any credit in the source's account.

(i) The emission fee for a Part 70 source that has resumed operation shall continue to be based on actual emissions reported for the last full calendar year of operation before the shutdown until that source has been in operation for a full calendar year and has submitted an updated inventory of actual emissions.

(ii) If a Part 70 source has chosen to base the emission fee on allowable emissions, then the prorated fee or credit shall be calculated using allowable emissions.

(iii) Temporary shut downs of less than three months, or other normal shut downs due to seasonal work or regularly scheduled maintenance shall not qualify for an emission fee credit.

(f) Modifications. The method for calculating the emission fee for a source shall not be affected by modifications

at that source, unless the source demonstrates to the Executive Secretary that another method for calculating chargeable emissions is more representative of operations after the modification has been made.

(g) The Executive Secretary may presume that potential emissions of any chargeable pollutant for the source are equivalent to the actual emissions for the source if recent inventory data are not available.

(4) Collection of Fees.

(a) The emission fee is due on October 1 of each calendar year or 45 days after the source has received notice of the amount of the fee, whichever is later.

(b) The Executive Secretary may require any person who fails to pay the annual emission fee by the due date to pay interest on the fee and a penalty under 19-2-109.1(7)(a).

(c) A person may contest an emission fee assessment, or associated penalty, under 19-2-109.1(8).

R307-415-10. Administrative Procedures and Appeals.

(1) Designation of proceedings as formal or informal. The following proceedings and actions are designated to be conducted either formally or informally in accordance with the applicable provisions of Administrative Procedures Act, Title 63, Chapter 46b.

(a) Calculation and assessment of annual emission fees shall be processed informally using the procedures identified in R307-415-9.

(b) Permit issuance, modification, revocation, reissuance and renewal shall be processed informally using the procedures identified in R307-415-2 through R307-415-8.

(c) Appeal of a permit denial or a final permit, as that term is defined in R307-415-3, shall be conducted formally in accordance with Sections 63-46b-6 through 63-46b-13.

(d) A formal adjudicative proceeding may be converted to an informal proceeding or an informal adjudicative proceeding may be converted to a formal proceeding in accordance with Subsection 63-46b-4(3).

(2) Appeals.

(a) The applicant, or any person meeting the requirements of Section 63-46b-9, may appeal a final permit or permit denial by submitting to the Executive Secretary within 30 days of final permit issuance or denial:

(i) a Request for Agency Action in accordance with Section 63-46b-3, and,

(ii) where the person appealing a final permit is not the applicant, a Petition to Intervene in accordance with Section 63-46b-9.

(b) Where appeal of a final permit is based solely on grounds arising after the 30-day deadline for filing an appeal, such requests may be filed no later than 30 days after the new grounds arise.

(3) Judicial Review.

(a) After exhaustion of administrative procedures, judicial review of final agency action shall be in accordance with Sections 63-46b-14 through 63-46b-18, except as provided in (b) below.

(b) Judicial review of the Executive Secretary's failure to act on any operating permit application or renewal shall be in accordance with Section 19-2-109.1(11).

KEY: air pollution, environmental protection, operating permit*, emission fee*

January 7, 1999 **19-2-109.1**
19-2-104

R309. Environmental Quality, Drinking Water.
R309-104. Monitoring, Reporting and Public Notification.
R309-104-1. General.

All public water systems are required to monitor their water to determine if they comply with the requirements for water quality stated in R309-103 of these regulations. In exceptional circumstances the Executive Secretary may modify the monitoring requirements given herein as is deemed appropriate.

The Executive Secretary may determine compliance or initiate compliance actions based upon analytical results and other information compiled by authorized representatives.

If the water fails to meet these minimum standards, then certain notification procedures must be carried out, as outlined in R309-104-7. Water suppliers must also keep analytical records in their possession, for a required length of time, as outlined in R309-104-7.

Unless otherwise required by the Board, the dates on which required monitoring shall be initiated are identical to those in 40 C.F.R. Sec 141, July 1, 1993.

In no event shall the Executive Secretary authorize modifications in the monitoring requirements which are less stringent than requirements established by the Federal Safe Drinking Water Act.

R309-104-2. Exemptions From Monitoring Requirements.

The applicable requirements for monitoring shall apply to each public water system, unless the public water system meets all of the following conditions:

a. Consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

b. Obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply;

c. Does not sell water to any person; and

d. Is not a carrier which conveys passengers in interstate commerce.

Furthermore, when a public water system supplies water to one or more other public water systems, the Executive Secretary may modify the monitoring requirements imposed by R309-104 to the extent that the interconnection of the systems justifies treating them as a single system for monitoring purposes.

R309-104-3. Approved Laboratories.

For the purpose of determining compliance, samples may be considered only if they have been analyzed by the State of Utah primacy laboratory or a laboratory certified by the Utah State Health Laboratory. However, measurements for pH, temperature, turbidity and disinfectant residual may, under the direction of the direct responsible charge operator, be performed by any water supplier or their representative.

All samples must be marked either: routine, repeat, check or investigative before submission of such samples to a certified lab. Routine, repeat, and check samples shall be considered compliance purposes samples.

All public water systems must either: contract with a certified laboratory to have the laboratory send all compliance purposes sample results, with the exception of Lead/Copper data, to the Division of Drinking Water, or must inform the Division of Drinking Water that they intend to forward all compliance purposes samples to the Division. Each public water system must furnish the Division of Drinking Water a copy of the contract with their certified laboratory or inform the Division in writing of the public water system's intent to forward the data to the Division.

Lead/Copper data must be submitted to the Division of Drinking Water using forms provided by the Division.

All sample results can be sent either electronically or in hard copy form.

R309-104-4. Water Quality Monitoring Requirements.

4.1 Inorganic Contaminants.

Community, non-transient non-community, and non-community water systems shall conduct monitoring as specified to determine compliance with the maximum contaminant levels specified in R309-103-2 in accordance with this section.

4.1.1 Monitoring shall be conducted as follows:

a. Groundwater systems shall take a minimum of one sample at every entry point to the distribution system which is representative of each well after treatment (hereafter called a sampling point) beginning in the compliance period starting January 1, 1993. The system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

b. Surface water systems shall take a minimum of one sample at every entry point to the distribution system after any application of treatment or in the distribution system at a point which is representative of each source after treatment (hereafter called a sampling point) beginning in the compliance period beginning January 1, 1993. The system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant. (Note: For purposes of this paragraph, surface water systems include systems with a combination of surface and ground sources.)

c. If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water is representative of all sources being used).

d. The frequency of monitoring for asbestos shall be in accordance with R309-104-4.1.2; the frequency of monitoring for antimony, arsenic, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium, sodium, sulfate, thallium, and total dissolved solids shall be in accordance with R309-104-4.1.3; the frequency of monitoring for nitrate shall be in accordance with R309-104-4.1.4; the frequency of monitoring for nitrite shall be in accordance with R309-104-4.1.5.

4.1.2 The frequency of monitoring conducted to determine compliance with the maximum contaminant level for asbestos specified in R309-103-2.1 shall be conducted as follows:

a. Each community and non-transient non-community water system is required to monitor for asbestos during the first three-year compliance period of each nine-year compliance cycle beginning in the compliance period starting January 1, 1993.

b. If the system believes it is not vulnerable to either asbestos contamination in its source water or due to corrosion

of asbestos-cement pipe, or both, it may apply to the Executive Secretary for a waiver of the monitoring requirement in paragraph 4.1.2.a. of this section. If the Executive Secretary grants the waiver, the system is not required to monitor for asbestos.

c. The Executive Secretary may grant a waiver based on a consideration of the following factors:

1. Potential asbestos contamination of the water source, and

2. The use of asbestos-cement pipe for finished water distribution and the corrosive nature of the water.

d. A waiver remains in effect until the completion of the three-year compliance period. Systems not receiving a waiver must monitor in accordance with the provisions of paragraph 4.1.2.a. of this section.

e. A system vulnerable to asbestos contamination due solely to corrosion of asbestos-cement pipe shall take one sample at a tap served by asbestos-cement pipe and under conditions where asbestos contamination is most likely to occur.

f. A system vulnerable to asbestos contamination due solely to source water shall monitor in accordance with the provision of paragraph 4.1.1. of this section.

g. A system vulnerable to asbestos contamination due both to its source water supply and corrosion of asbestos-cement pipe shall take one sample at a tap served by asbestos-cement pipe and under conditions where asbestos contamination is most likely to occur.

h. A system which exceeds the maximum contaminant levels as determined in R309-104-4.1.8. shall monitor quarterly beginning in the next quarter after the violation occurred.

i. The Executive Secretary may decrease the quarterly monitoring requirement to the frequency specified in paragraph 4.1.2.a. of this section provided the Executive Secretary has determined that the system is reliably and consistently below the maximum contaminant level. In no case can the Executive Secretary make this determination unless a groundwater system takes a minimum of two quarterly samples and a surface (or combined surface/ground) water system takes a minimum of four quarterly samples.

j. If monitoring data collected after January 1, 1990 are generally consistent with the requirements of R309-104-4.1.2., then the Executive Secretary may allow systems to use that data to satisfy the monitoring requirement for the initial compliance period beginning January 1, 1993.

4.1.3. The frequency of monitoring conducted to determine compliance with the maximum contaminant levels in R309-103-2.1. for antimony, arsenic, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium, sodium, sulfate, thallium and total dissolved solids shall be as follows:

a. Each community and non-transient non-community groundwater system shall take one sample at each sampling point once every three years. Each community and non-transient non-community surface water system (or combined surface/ground) shall take one sample annually at each sampling point. Each non-community system shall take one sample for sulfate only at each sampling point once every three years for both groundwater and surface water systems.

b. The system may apply to the Executive Secretary for a waiver from the monitoring frequencies specified in paragraph 4.1.3.a. of this section. A waiver from the monitoring requirements for arsenic shall not be available.

c. A condition of the waiver shall require that a system shall take a minimum of one sample while the waiver is effective. The term during which the waiver is effective shall not exceed one compliance cycle (i.e., nine years).

d. The Executive Secretary may grant a waiver provided surface water systems have monitored annually for at least three years and groundwater systems have conducted a minimum of three rounds of monitoring. (At least one sample shall have been taken since January 1, 1990.) Both surface and groundwater systems shall demonstrate that all previous analytical results were less than the maximum contaminant level. Systems that use a new water source are not eligible for a waiver until three rounds of monitoring from the new source have been completed.

e. In determining the appropriate reduced monitoring frequency, the Executive Secretary shall consider:

1. Reported concentrations from all previous monitoring;

2. The degree of variation in reported concentrations; and

3. Other factors which may affect contaminant concentrations such as changes in groundwater pumping rates, changes in the system's configuration, changes in the system's operating procedures, or changes in stream flows or characteristics.

f. A decision by the Executive Secretary to grant a waiver shall be made in writing and shall set forth the basis for the determination. The determination may be initiated by the Executive Secretary or upon an application by the public water system. The public water system shall specify the basis for its request. The Executive Secretary shall review and, where appropriate, revise its determination of the appropriate monitoring frequency when the system submits new monitoring data or when other data relevant to the system's appropriate monitoring frequency become available.

g. Systems which exceed the maximum contaminant levels as calculated in R309-104-4.1.8. of this section shall monitor quarterly beginning in the next quarter after the violation occurred.

h. The Executive Secretary may decrease the quarterly monitoring requirement to the frequencies specified in paragraphs 4.1.3.a. and 4.1.3.b. of this section provided it has determined that the system is reliably and consistently below the maximum contaminant level. In no case can the Executive Secretary make this determination unless a groundwater system takes a minimum of two quarterly samples and a surface water system takes a minimum of four quarterly samples.

4.1.4. All public water systems (community; non-transient non-community; and non-community systems) shall monitor to determine compliance with the maximum contaminant level for nitrate in R309-103-2.1.

a. Community and non-transient non-community water systems served by groundwater systems shall monitor annually beginning January 1, 1993; systems served by surface water shall monitor quarterly beginning January 1, 1993.

b. For community and non-transient non-community water systems, the repeat monitoring frequency for ground water systems shall be quarterly for at least one year following any

one sample in which the concentration is greater than or equal to 50 percent of the MCL. The Executive Secretary may allow a groundwater system to reduce the sampling frequency to annually after four consecutive quarterly samples are reliably and consistently less than the MCL.

c. For community and non-transient non-community water systems, the Executive Secretary may allow a surface water system to reduce the sampling frequency to annually if all analytical results from four consecutive quarters are less than 50 percent of the MCL. A surface water system shall return to quarterly monitoring if any one sample is greater than or equal to 50 percent of the MCL.

d. Each non-community water system shall monitor annually beginning January 1, 1993.

e. After the initial round of quarterly sampling is completed, each community and non-transient non-community system which is monitoring annually shall take subsequent samples during the quarter(s) which previously resulted in the highest analytical result.

4.1.5. All public water systems (community; non-transient non-community; and non-community systems) shall monitor to determine compliance with the maximum contaminant level for nitrite in R309-103-2.1.

a. All public water systems shall take one sample at each sampling point in the compliance period beginning January 1, 1993 and ending December 31, 1995.

b. After the initial sample, systems where an analytical result for nitrite is less than 50 percent of the MCL shall monitor at the frequency specified by the Executive Secretary.

c. For community, non-transient non-community, and non-community water systems, the repeat monitoring frequency for any water system shall be quarterly for at least one year following any one sample in which the concentration is greater than or equal to 50 percent of the MCL. The Executive Secretary may allow a system to reduce the sampling frequency to annually after determining the system is reliably and consistently less than the MCL.

d. Systems which are monitoring annually shall take each subsequent sample during the quarter(s) which previously resulted in the highest analytical result.

4.1.6 Confirmation samples:

a. Where the results of sampling for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium, sulfate, thallium or total dissolved solids indicate an exceedance of the maximum contaminant level, the Executive Secretary may require that one additional sample be collected as soon as possible after the initial sample was taken (but not to exceed two weeks) at the same sampling point.

b. Where nitrate or nitrite sampling results indicate an exceedance of the maximum contaminant level, the system shall take a confirmation sample within 24 hours of the system's receipt of notification of the analytical results of the first sample. Systems unable to comply with the 24-hour sampling requirement must immediately notify the consumers in the area served by the public water system source in accordance with R309-104-7.1.a. Systems exercising this option must take and analyze a confirmation sample within two weeks of notification of the analytical results of the first sample.

c. Procedures if the Secondary Standard for Fluoride is Exceeded Notification of State and/or Public.

If the result of an analysis indicates that the level of fluoride exceeds the Secondary Drinking Water Standard, the supplier of water shall give notice as required in R309-104-7.

d. The results of the initial and confirmation sample(s) taken for any contaminant, shall be averaged. The resulting average shall be used to determine the system's compliance in accordance with paragraph 4.1.8. of this section. The Executive Secretary has the discretion to delete results of obvious sampling errors.

4.1.7. The Executive Secretary may require more frequent monitoring than specified in paragraphs 4.1.2., 4.1.3., 4.1.4. and 4.1.5. of this section or may require confirmation samples for positive and negative results. The Executive Secretary may also require an appropriate treatment process.

4.1.8. Compliance with R309-103-2.1. shall be determined based on the analytical result(s) obtained at each sampling point.

a. For systems which are conducting monitoring at a frequency greater than annual, compliance with the maximum contaminant levels for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium, sulfate, thallium and total dissolved solids is determined by a running annual average at each sampling point. If the average at any sampling point is greater than the MCL, then the system is out of compliance. If any one sample would cause the annual average to be exceeded, then the system is out of compliance immediately. Any sample below the detection limit shall be calculated at zero for the purpose of determining the annual average.

b. For systems which are monitoring annually, or less frequently, the system is out of compliance with the maximum contaminant levels for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium, sulfate, thallium and total dissolved solids if the level of a contaminant at any sampling point is greater than the MCL. If a confirmation sample is required by the Executive Secretary, the determination of compliance will be based on the average of the two samples.

c. Compliance with the maximum contaminant levels for nitrate and nitrite is determined based on one sample. If the levels of nitrate and/or nitrite exceed the MCLs in the initial sample, a confirmation sample is required in accordance with paragraph 4.1.6.b. of this section, and compliance shall be determined based on the average of the initial and confirmation samples.

d. If a public water system has a distribution system separable from other parts of the distribution system with no interconnections, the Executive Secretary may allow the system to give public notice to only the area served by that portion of the system which is out of compliance.

4.1.9. Each public water system shall monitor at the time designated by the Executive Secretary during each compliance period.

4.2 Lead and Copper

4.2.1 General requirements.

a. Applicability and effective dates

1. The requirements of R309-104-4.2. unless otherwise

indicated, apply to community water systems and non-transient non-community water systems (hereinafter referred to as water systems or systems).

2. The requirements in R309-104-4.2.2., R309-104-4.2.4, and R309-104-4.2.7. shall take effect December 7, 1992.

b. R309-104-4.2. establishes a treatment technique that includes requirements for corrosion control treatment, source water treatment, lead service line replacement, and public education. These requirements are triggered, in some cases, by lead and copper action levels measured in samples collected at consumers' taps.

c. Corrosion control treatment requirements

1. All water systems shall install and operate optimal corrosion control treatment. However, any water system that complies with the applicable corrosion control treatment requirements specified by the Executive Secretary under R309-104-4.2.2 and R309-104-4.2.4.a. shall be deemed in compliance with this treatment requirement.

d. Source water treatment requirements

Any system exceeding the lead or copper action level shall implement all applicable source water treatment requirements specified by the Executive Secretary under R309-104-4.2.4.b.

e. Lead service line replacement requirements

Any system exceeding the lead action level after implementation of applicable corrosion control and source water treatment requirements shall complete the lead service line replacement requirements contained in R309-104-4.2.4.c.

f. Public education requirements

Any system exceeding the lead action level shall implement the public education requirements contained in R309-104-4.2.7.

g. Monitoring and analytical requirements

Tap water monitoring for lead and copper, monitoring for water quality parameters, source water monitoring for lead and copper, and analyses of the monitoring results shall be completed in compliance with R309-104-4.2.3., R309-104-4.2.6. and R309-104-3.

h. Reporting requirements

Systems shall report to the Executive Secretary any information required by the treatment provisions of this subpart and R309-104-4.2.8.

i. Recordkeeping requirements

Systems shall maintain records in accordance with R309-104-8.b.

j. Violation of primary drinking water rules

Failure to comply with the applicable requirements of R309-104-4.2., including requirements established by the Executive Secretary pursuant to these provisions, shall constitute a violation of the primary drinking water regulations for lead and/or copper.

4.2.2. Applicability of corrosion control treatment steps to small, medium-size and large water systems.

a. Systems shall complete the applicable corrosion control treatment requirements described in R309-104-4.2.4.a. by the deadlines established in this section.

1. A large system (serving greater than 50,000 persons) shall complete the corrosion control treatment steps specified in R309-104-4.2.2.d., unless it is deemed to have optimized corrosion control under R309-104-4.2.2.b.2. or b.3.

2. A small system (serving less than 3300 persons) and a medium-size system (serving greater than 3,300 and less than 50,000 persons) shall complete the corrosion control treatment steps specified in R309-104-4.2.2.e., unless it is deemed to have optimized corrosion control under R309-104-4.2.2.b.1., b.2., or b.3.

b. A system is deemed to have optimized corrosion control and is not required to complete the applicable corrosion control treatment steps identified in this section if the system satisfies one of the following criteria:

1. A small or medium-size water system is deemed to have optimized corrosion control if the system meets the lead and copper action levels during each of two consecutive six-month monitoring periods conducted in accordance with R309-104-4.2.3.

2. Any water system may be deemed by the Executive Secretary to have optimized corrosion control treatment if the system demonstrates to the satisfaction of the Executive Secretary that it has conducted activities equivalent to the corrosion control steps applicable to such system under this section. If the Executive Secretary makes this determination, it shall provide the system with written notice explaining the basis for its decision and shall specify the water quality control parameters representing optimal corrosion control in accordance with R309-104-4.2.4.a.6. A system shall provide the Executive Secretary with the following information in order to support a determination under this paragraph:

(a) the results of all test samples collected for each of the water quality parameters in R309-104-4.2.4.a.3(c).

(b) a report explaining the test methods used by the water system to evaluate the corrosion control treatments listed in R309-104-4.2.4.a.3(a), the results of all tests conducted, and the basis for the system's selection of optimal corrosion control treatment;

(c) a report explaining how corrosion control has been installed and how it is being maintained to insure minimal lead and copper concentrations at consumers' taps; and

(d) the results of tap water samples collected in accordance with R309-104-4.2.3 at least once every six months for one year after corrosion control has been installed.

3. Any water system is deemed to have optimized corrosion control if it submits results of tap water monitoring conducted in accordance with R309-104-4.2.3 and source water monitoring conducted in accordance with R309-104-4.2.6 that demonstrates for two consecutive six-month monitoring periods that the difference between the 90th percentile tap water lead level computed under R309-103-2.4.c., and the highest source water lead concentration, is less than the Practical Quantitation Level (PQL) for lead as specified in R309-104-3.

c. Any small or medium-size water system that is required to complete the corrosion control steps due to its exceedance of the lead or copper action level may cease completing the treatment steps whenever the system meets both action levels during each of two consecutive monitoring periods conducted pursuant to R309-104-4.2.3 and submits the results to the Executive Secretary. If any such water system thereafter exceeds the lead or copper action level during any monitoring period, the system (or the Executive Secretary, as the case may be) shall recommence completion of the applicable treatment steps, beginning with the first treatment step which was not

previously completed in its entirety. The Executive Secretary may require a system to repeat treatment steps previously completed by the system where the Executive Secretary determines that this is necessary to implement properly the treatment requirements of this section. The Executive Secretary shall notify the system in writing of such a determination and explain the basis for its decision.

d. Treatment steps and deadlines for large systems

Except as provided in R309-104-4.2.2.b.2. and b.3., large systems shall complete the following corrosion control treatment steps by the indicated dates.

1. Step 1: The system shall conduct initial monitoring (R309-104-4.2.3.d.1 and R309-104-4.2.5.b) during two consecutive six-month monitoring periods by January 1, 1993.

2. Step 2: The system shall complete corrosion control studies (R309-104-4.2.4.a.3.) by July 1, 1994.

3. Step 3: The Executive Secretary shall designate optimal corrosion control treatment (R309-104-4.2.4.a.4.) by January 1, 1995.

4. Step 4: The system shall install optimal corrosion control treatment (R309-104-4.2.4.a.5.) by January 1, 1997.

5. Step 5: The system shall complete follow-up sampling (R309-104-4.2.3.d.2 and R309-104-4.2.5.c.) by January 1, 1998.

6. Step 6: The Executive Secretary shall review installation of treatment and designate optimal water quality control parameters (R309-104-4.2.4.a.6.) by July 1, 1998.

7. Step 7: The system shall operate in compliance with the State-specified optimal water quality control parameters (R309-104-4.2.4.a.7.) and continue to conduct tap sampling (R309-104-4.2.3.d.3 and R309-104-4.2.5.d).

e. Treatment steps and deadlines for small and medium-size systems

Except as provided in R309-104-4.2.2.b., small and medium-size systems shall complete the following corrosion control treatment steps by the indicated time periods.

1. Step 1: The system shall conduct initial tap sampling (R309-104-4.2.3.d.1 and R309-104-4.2.5.b) until the system either exceeds the lead or copper action level or becomes eligible for reduced monitoring under R309-104-4.2.3.d.4. A system exceeding the lead or copper action level shall recommend optimal corrosion control treatment (R309-104-4.2.4.a.1.) within six months after it exceeds one of the action levels.

2. Step 2: Within 12 months after a system exceeds the lead or copper action level, the Executive Secretary may require the system to perform corrosion control studies (R309-104-4.2.4.a.2.). If the Executive Secretary does not require the system to perform such studies, the Executive Secretary shall specify optimal corrosion control treatment (R309-104-4.2.4.a.4.) within the following time-frames:

(a) for medium-size systems, within 18 months after such system exceeds the lead or copper action level,

(b) for small systems, within 24 months after such system exceeds the lead or copper action level.

3. Step 3: If the Executive Secretary requires a system to perform corrosion control studies under step 2, the system shall complete the studies (R309-104-4.2.4.a.3.) within 18 months after the Executive Secretary requires that such studies be conducted.

4. Step 4: If the system has performed corrosion control studies under step 2, the Executive Secretary shall designate optimal corrosion control treatment (R309-104-4.2.4.a.4.) within 6 months after completion of step 3.

5. Step 5: The system shall install optimal corrosion control treatment (R309-104-4.2.4.a.5.) within 24 months after the Executive Secretary designates such treatment.

6. Step 6: The system shall complete follow-up sampling (R309-104-4.2.3.d.2 and R309-104-4.2.5.c) within 36 months after the Executive Secretary designates optimal corrosion control treatment.

7. Step 7: The Executive Secretary shall review the system's installation of treatment and designate optimal water quality control parameters (R309-104-4.2.4.a.6.) within 6 months after completion of step 6.

8. Step 8: The system shall operate in compliance with the Executive Secretary-designated optimal water quality control parameters (R309-104-4.2.4.a.7.) and continue to conduct tap sampling (R309-104-4.2.3.d.3 and R309-104-4.2.5.d).

4.2.3. Monitoring requirements for lead and copper in tap water.

a. Sample site location

1. By the applicable date for commencement of monitoring under R309-104-4.2.3.d.1., each water system shall complete a materials evaluation of its distribution system in order to identify a pool of targeted sampling sites that meets the requirements of this section, and which is sufficiently large to ensure that the water system can collect the number of lead and copper tap samples required in R309-104-4.2.3.c. All sites from which first draw samples are collected shall be selected from this pool of targeted sampling sites. Sampling sites may not include faucets that have point-of-use or point-of-entry treatment devices designed to remove inorganic contaminants.

2. A water system shall use the information on lead, copper, and galvanized steel when conducting a materials evaluation. When an evaluation of this information is insufficient to locate the requisite number of lead and copper sampling sites that meet the targeting criteria in R309-104-4.2.3.a., the water system shall review the sources of information listed below in order to identify a sufficient number of sampling sites. In addition, the system shall seek to collect such information where possible in the course of its normal operations (e.g., checking service line materials when reading water meters or performing maintenance activities):

(a) all plumbing codes, permits, and records in the files of the building department(s) which indicate the plumbing materials that are installed within publicly and privately owned structures connected to the distribution system;

(b) all inspections and records of the distribution system that indicate the material composition of the service connections that connect a structure to the distribution system; and

(c) all existing water quality information, which includes the results of all prior analyses of the system or individual structures connected to the system, indicating locations that may be particularly susceptible to high lead or copper concentrations.

3. The sampling sites selected for a community water system's sampling pool ("tier 1 sampling sites") shall consist of

single family structures that:

(a) contain copper pipes with lead solder installed after 1982 or contain lead pipes; and/or

(b) are served by a lead service line.

When multiple-family residences comprise at least 20 percent of the structures served by a water system, the system may include these types of structures in its sampling pool.

4. Any community water system with insufficient tier 1 sampling sites shall complete its sampling pool with "tier 2 sampling sites", consisting of buildings, including multiple-family residences that:

(a) contain copper pipes with lead solder installed after 1982 or contain lead pipes; and/or

(b) are served by a lead service line.

5. Any community water system with insufficient tier 1 and tier 2 sampling sites shall complete its sampling pool with "tier 3 sampling sites", consisting of single family structures that contain copper pipes with lead solder installed before 1983.

6. The sampling sites selected for a non-transient non-community water system ("tier 1 sampling sites") shall consist of buildings that:

(a) contain copper pipes with lead solder installed after 1982 or contain lead pipes; and/or

(b) are served by a lead service line.

7. A non-transient non-community water system with insufficient tier 1 sites that meet the targeting criteria in R309-104-4.2.3.a.6. shall complete its sampling pool with sampling sites that contain copper pipes with lead solder installed before 1983.

8. Any water system whose sampling pool does not consist exclusively of tier 1 sites shall demonstrate in a letter submitted to the Executive Secretary under R309-104-4.2.8.a.2. why a review of the information listed in R309-104-4.2.3.a.2. was inadequate to locate a sufficient number of tier 1 sites. Any community water system which includes tier 3 sampling sites in its sampling pool shall demonstrate in such a letter why it was unable to locate a sufficient number of tier 1 and tier 2 sampling sites.

9. Any water system whose distribution system contains lead service lines shall draw 50 percent of the samples it collects during each monitoring period from sites that contain lead pipes, or copper pipes with lead solder, and 50 percent of the samples from sites served by a lead service line. A water system that cannot identify a sufficient number of sampling sites served by a lead service line shall demonstrate in a letter submitted to the Executive Secretary under R309-104-4.2.8.a.4. why the system was unable to locate a sufficient number of such sites. Such a water system shall collect first draw samples from all of the sites identified as being served by such lines.

b. Sample collection methods

1. All tap samples for lead and copper collected in accordance with this section, with the exception of lead service line samples collected under R309-104-4.2.4.c.3., shall be first draw samples.

2. Each first-draw tap sample for lead and copper shall be one liter in volume and have stood motionless in the plumbing system of each sampling site for at least six hours. First draw samples from residential housing shall be collected from the cold-water kitchen tap or bathroom sink tap. First-draw samples from a non-residential building shall be collected at an interior tap from which water is typically drawn for consumption. First draw samples may be collected by the system or the system may allow residents to collect first draw samples after instructing the residents of the sampling procedures specified in this paragraph. To avoid problems with residents handling nitric acid, acidification of first draw samples may be done up to fourteen days after the sample is collected. If the sample is not acidified immediately after collection, then the sample must stand in the original container for at least 28 hours after acidification. If a system allows residents to perform sampling, the system may not challenge, based on alleged errors in sample collection, the accuracy of sampling results.

3. Each service line sample shall be one liter in volume and have stood motionless in the lead service line for at least six hours. Lead service line samples shall be collected in one of the following three ways:

(a) at the tap after flushing the volume of water between the tap and the lead service line. The volume of water shall be calculated based on the interior diameter and length of the pipe between the tap and the lead service line;

(b) tapping directly into the lead service line; or

(c) if the sampling site is a building constructed as a single-family residence, allowing the water to run until there is a significant change in temperature which would be indicative of water that has been standing in the lead service line.

4. A water system shall collect each first draw tap sample from the same sampling site from which it collected a previous sample. If, for any reason, the water system cannot gain entry to a sampling site in order to collect a follow-up tap sample, the system may collect the follow-up tap sample from another sampling site in its sampling pool as long as the new site meets the same targeting criteria, and is within reasonable proximity of the original site.

c. Number of samples

Water systems shall collect at least one sample during each monitoring period specified in R309-104-4.2.3.d. from the number of sites listed in the first column in Table 104-1 ("standard monitoring"). A system conducting reduced monitoring under R309-104-4.2.3.d.4. may collect one sample from the number of sites specified in the second column in Table 104-1 during each monitoring period specified in R309-104-4.2.3.d.4.

TABLE 104-1
NUMBER OF LEAD AND COPPER SAMPLING SITES

System Size (# People Served)	# of sites (Standard Monitoring)	# of sites (Reduced Monitoring)
Greater than 100,000	100	50
10,001-100,000	60	30
3,301 to 10,000	40	20
501 to 3,300	20	10
101 to 500	10	5
100 or less	5	5

d. Timing of monitoring

1. Initial tap sampling

The first six-month monitoring period for small, medium-size and large systems shall begin on the following dates in Table 104-2:

TABLE 104-2
INITIAL LEAD AND COPPER MONITORING PERIODS

System Size (# People Served)	First six-month Monitoring Period Begins On
Greater than 50,000	January 1, 1992
3,301 to 50,000	July 1, 1992
3,300 or less	July 1, 1993

(a) All large systems shall monitor during two consecutive six-month periods.

(b) All small and medium-size systems shall monitor during each six-month monitoring period until:

(1) the system exceeds the lead or copper action level and is therefore required to implement the corrosion control treatment requirements under R309-104-4.2.2, in which case the system shall continue monitoring in accordance with R309-104-4.2.3.d.2., or

(2) the system meets the lead and copper action levels during two consecutive six-month monitoring periods, in which case the system may reduce monitoring in accordance with R309-104-4.2.3.d.4.

2. Monitoring after installation of corrosion control and source water treatment

(a) Any large system which installs optimal corrosion control treatment pursuant to R309-104-4.2.2.d.4. shall monitor during two consecutive six-month monitoring periods by the date specified in R309-104-4.2.2.d.5.

(b) Any small or medium-size system which installs optimal corrosion control treatment pursuant to R309-104-4.2.2.e.5. shall monitor during two consecutive six-month monitoring periods by the date specified in R309-104-4.2.2.e.6.

(c) Any system which installs source water treatment pursuant to R309-104-4.2.4.b.1(c) shall monitor during two consecutive six-month monitoring periods by the date specified in R309-104-4.2.4.b.1(d).

3. Monitoring after State specifies water quality parameter values for optimal corrosion control

After the Executive Secretary specifies the values for water quality control parameters under R309-104-4.2.4.a.6., the system shall monitor during each subsequent six-month monitoring period, with the first monitoring period to begin on the date the Executive Secretary specifies the optimal values under R309-104-4.2.4.a.6.

4. Reduced monitoring

(a) A small or medium-size water system that meets the lead and copper action levels during each of two consecutive six-month monitoring periods may reduce the number of samples in accordance with R309-104-4.2.3.c., Table 104-1, and reduce the frequency of sampling to once per year.

(b) Any water system that maintains the range of values for the water quality control parameters reflecting optimal corrosion control treatment specified by the Executive Secretary under R309-104-4.2.4.a.6. during each of two consecutive six-month monitoring periods may request that the Executive Secretary allow the system to reduce the frequency of monitoring to once per year and to reduce the number of lead and copper samples in accordance with R309-104-4.2.3.c., Table 104-1. The Executive Secretary shall review the information submitted by the water system and shall make its decision in writing, setting forth the basis for its determination. The Executive Secretary shall review, and where appropriate, revise its determination when the system submits new monitoring or treatment data, or when other data relevant to the number and frequency of tap sampling becomes available.

(c) A small or medium-size water system that meets the lead and copper action levels during three consecutive years of monitoring may reduce the frequency of monitoring for lead and copper from annually to once every three years. Any water system that maintains the range of values for the water quality control parameters reflecting optimal corrosion control treatment specified by the Executive Secretary under R309-104-4.2.4.a.6. during three consecutive years of monitoring may request that the Executive Secretary allow the system to reduce the frequency of monitoring from annually to once every three years. The Executive Secretary shall review the information submitted by the water system and shall make its decision in writing, setting forth the basis for its determination. The Executive Secretary shall review, and where appropriate, revise its determination when the system submits new monitoring or treatment data, or when other data relevant to the number and frequency of tap sampling becomes available.

(d) A water system that reduces the number and frequency of sampling shall collect these samples from sites included in the pool of targeted sampling sites identified in R309-104-4.2.3.a. Systems sampling annually or less frequently shall conduct the lead and copper tap sampling during the months of June, July, August or September.

(e) A small or medium-size water system subject to reduced monitoring that exceeds the lead or copper action level shall resume sampling in accordance R309-104-4.2.3.d.3. and collect the number of samples specified for standard monitoring under R309-104-4.2.3.c., Table 104-1. Such system shall also conduct water quality parameter monitoring in accordance with R309-104-4.2.5.b., c. or d. (as appropriate) during the monitoring period in which it exceeded the action level. Any water system subject to the reduced monitoring frequency that fails to operate within the range of values for the water quality parameters specified by the Executive Secretary under R309-104-4.2.4.a.6. shall resume tap water sampling in accordance with R309-104-4.2.3.d.3. and collect the number of samples specified for standard monitoring under R309-104-4.2.3.c., Table 104-1.

e. Additional monitoring by systems

The results of any monitoring conducted in addition to the minimum requirements of this section shall be considered by the system and the Executive Secretary in making any determinations (i.e., calculating the 90th percentile lead or copper level).

f. The Executive Secretary has the authority to allow the use of previously collected monitoring data for purposes of monitoring, if the data were collected in accordance with this section and analyzed in accordance with R309-104-3.

4.2.4. Corrosion Control for Control of Lead and Copper

a. Description of corrosion control treatment requirements.

Each system shall complete the corrosion control treatment requirements described below which are applicable to such system under R309-104-4.2.2.

1. System recommendation regarding corrosion control

treatment

Based upon the results of lead and copper tap monitoring and water quality parameter monitoring, small and medium-size water systems exceeding the lead or copper action level shall recommend installation of one or more of the corrosion control treatments listed in R309-104-4.2.4.a.3(a) which the system believes constitutes optimal corrosion control for that system. The Executive Secretary may require the system to conduct additional water quality parameter monitoring in accordance with R309-104-4.2.5.b. to assist the Executive Secretary in reviewing the system's recommendation.

2. Studies of corrosion control treatment required for small and medium-size systems.

The Executive Secretary may require any small or medium-size system that exceeds the lead or copper action level to perform corrosion control studies under R309-104-4.2.4.a.3. to identify optimal corrosion control treatment for the system.

3. Performance of corrosion control studies

(a) Any public water system performing corrosion control studies shall evaluate the effectiveness of each of the following treatments, and, if appropriate, combinations of the following treatments to identify the optimal corrosion control treatment for that system:

(1) alkalinity and pH adjustment;

(2) calcium hardness adjustment; and

(3) the addition of a phosphate or silicate based corrosion inhibitor at a concentration sufficient to maintain an effective residual concentration in all test tap samples.

(b) The water system shall evaluate each of the corrosion control treatments using either pipe rig/loop tests, metal coupon tests, partial-system tests, or analyses based on documented analogous treatments with other systems of similar size, water chemistry and distribution system configuration.

(c) The water system shall measure the following water quality parameters in any tests conducted under this paragraph before and after evaluating the corrosion control treatments listed above:

(1) lead;

(2) copper;

(3) pH;

(4) alkalinity;

(5) calcium;

(6) conductivity;

(7) orthophosphate (when an inhibitor containing a phosphate compound is used);

(8) silicate (when an inhibitor containing a silicate compound is used);

(9) water temperature.

(d) The water system shall identify all chemical or physical constraints that limit or prohibit the use of a particular corrosion control treatment and document such constraints with at least one of the following:

(1) data and documentation showing that a particular corrosion control treatment has adversely affected other water treatment processes when used by another water system with comparable water quality characteristics; and/or

(2) data and documentation demonstrating that the water system has previously attempted to evaluate a particular corrosion control treatment and has found that the treatment is ineffective or adversely affects other water quality treatment processes.

(e) The water system shall evaluate the effect of the chemicals used for corrosion control treatment on other water quality treatment processes.

(f) On the basis of an analysis of the data generated during each evaluation, the water system shall recommend to the Executive Secretary in writing the treatment option that the corrosion control studies indicate constitutes optimal corrosion control treatment for that system. The water system shall provide a rationale for its recommendation along with all supporting documentation specified in R309-104-4.2.4.a.3.(a) through R309-104-4.2.4.a.3.(e).

4. Designation of optimal corrosion control treatment

(a) Based upon consideration of available information including, where applicable, studies performed under R309-104-4.2.4.a.3. and a system's recommended treatment alternative, the Executive Secretary shall either approve the corrosion control treatment option recommended by the system, or designate alternative corrosion control treatment(s) from among those listed in R309-104-4.2.4.a.3.(a). When designating optimal treatment the Executive Secretary shall consider the effects that additional corrosion control treatment will have on water quality parameters and on other water quality treatment processes.

(b) The Executive Secretary shall notify the system of its decision on optimal corrosion control treatment in writing and explain the basis for this determination. If the Executive Secretary requests additional information to aid its review, the water system shall provide the information.

5. Installation of optimal corrosion control

Each system shall properly install and operate throughout its distribution system the optimal corrosion control treatment designated by the Executive Secretary under R309-104-4.2.4.a.4.

6. Review of treatment and specification of optimal water quality control parameters

The Executive Secretary shall evaluate the results of all lead and copper tap samples and water quality parameter samples submitted by the water system and determine whether the system has properly installed and operated the optimal corrosion control treatment designated by the Executive Secretary in R309-104-4.2.4.a.4. Upon reviewing the results of tap water and water quality parameter monitoring by the system, both before and after the system installs optimal corrosion control treatment, the Executive Secretary shall designate:

(a) A minimum value or a range of values for pH measured at each entry point to the distribution system;

(b) A minimum pH value, measured in all tap samples. Such value shall be equal to or greater than 7.0, unless the Executive Secretary determines that meeting a pH level of 7.0 is not technologically feasible or is not necessary for the system to optimize corrosion control;

(c) If a corrosion inhibitor is used, a minimum concentration or a range of concentrations for the inhibitor, measured at each entry point to the distribution system and in all tap samples, that the Executive Secretary determines is necessary to form a passivating film on the interior walls of the pipes of the distribution system;

(d) If alkalinity is adjusted as part of optimal corrosion control treatment, a minimum concentration or a range of concentrations for alkalinity, measured at each entry point to the distribution system and in all tap samples;

(e) If calcium carbonate stabilization is used as part of corrosion control, a minimum concentration or a range of concentrations for calcium, measured in all tap samples.

The values for the applicable water quality control parameters listed above shall be those that the Executive Secretary determines to reflect optimal corrosion control treatment for the system. The Executive Secretary may designate values for additional water quality control parameters determined by the Executive Secretary to reflect optimal corrosion control for the system. The Executive Secretary shall notify the system in writing of these determinations and explain the basis for the decisions.

7. Continued Operation and Monitoring

All systems shall maintain water quality parameter values at or above minimum values or within ranges designated by the Executive Secretary under R309-104-4.2.4.a.6. in each sample collected under R309-104-4.2.5.d. If the water quality parameter value of any sample is below the minimum value or outside the range designated by the Executive Secretary, then the system is out of compliance with this paragraph. As specified in R309-104-4.2.5.d., the system may take a confirmation sample for any water quality parameter value no later than 3 days after the first sample. If a confirmation sample is taken, the result must be averaged with the first sampling result and the average must be used for any compliance determinations under this paragraph. The Executive Secretary has the discretion to delete results of obvious sampling errors from this calculation.

8. Modification of treatment decisions

Upon its own initiative or in response to a request by a water system or other interested party, the Executive Secretary may modify its determination of the optimal corrosion control treatment under R309-104-4.2.4.a.4. or optimal water quality control parameters under R309-104-4.2.4.a.6. A request for modification by a system or other interested party shall: be in writing, explain why the modification is appropriate, and provide supporting documentation. The Executive Secretary may modify its determination where it concludes that such change is necessary to ensure that the system continues to optimize corrosion control treatment. A revised determination shall: be made in writing, set forth the new treatment requirements, explain the basis for the Executive Secretary's decision, and provide an implementation schedule for completing the treatment modifications.

b. Source water treatment requirements.

Systems shall complete the applicable source water monitoring and treatment requirements (described in the referenced portions of R309-104-4.2.4.b.2., and in R309-104-4.2.3., and R309-104-4.2.6.) by the following deadlines.

1. Deadlines for Completing Source Water Treatment Steps

(a) Step 1: A system exceeding the lead or copper action level shall complete lead and copper source water monitoring (R309-104-4.2.6.b.) and make a treatment recommendation to the Executive Secretary (R309-104-4.2.4.b.2.(a)) within 6 months after exceeding the lead or copper action level.

(b) Step 2: The Executive Secretary shall make a determination regarding source water treatment (R309-104-4.2.4.b.2(b)) within 6 months after submission of monitoring results under step 1.

(c) Step 3: If the Executive Secretary requires installation of source water treatment, the system shall install the treatment (R309-104-4.2.4.b.2(c)) within 24 months after completion of step 2.

(d) Step 4: The system shall complete follow-up tap water monitoring (R309-104-4.2.3.d.2.) and source water monitoring (R309-104-4.2.6.c.) within 36 months after completion of step 2.

(e) Step 5: The Executive Secretary shall review the system's installation and operation of source water treatment and specify maximum permissible source water levels (R309-104-4.2.4.b.2(d)) within 6 months after completion of step 4.

(f) Step 6: The system shall operate in compliance with the State-specified maximum permissible lead and copper source water levels (R309-104-4.2.4.b.2(d)) and continue source water monitoring (R309-104-4.2.6.d.).

2. Description of Source Water Treatment Requirements

(a) System treatment recommendation

Any system which exceeds the lead or copper action level shall recommend in writing to the Executive Secretary the installation and operation of one of the source water treatments listed in R309-104-4.2.4.b.2(b). A system may recommend that no treatment be installed based upon a demonstration that source water treatment is not necessary to minimize lead and copper levels at users' taps.

(b) Determination regarding source water treatment

The Executive Secretary shall complete an evaluation of the results of all source water samples submitted by the water system to determine whether source water treatment is necessary to minimize lead or copper levels in water delivered to users' taps. If the Executive Secretary determines that treatment is needed, the Executive Secretary shall either require installation and operation of the source water treatment recommended by the system (if any) or require the installation and operation of another source water treatment from among the following: ion exchange, reverse osmosis, lime softening or coagulation/filtration. If the Executive Secretary requests additional information to aid in its review, the water system shall provide the information by the date specified by the Executive Secretary in its request. The Executive Secretary shall notify the system in writing of its determination and set forth the basis for its decision.

(c) Installation of source water treatment

Each system shall properly install and operate the source water treatment designated by the Executive Secretary under R309-104-4.2.4.b.2(b).

(d) Review of source water treatment and specification of maximum permissible source water levels

The Executive Secretary shall review the source water samples taken by the water system both before and after the system installs source water treatment, and determine whether the system has properly installed and operated the source water treatment designated by the Executive Secretary. Based upon its review, the Executive Secretary shall designate the maximum

permissible lead and copper concentrations for finished water entering the distribution system. Such levels shall reflect the contaminant removal capability of the treatment properly operated and maintained. The Executive Secretary shall notify the system in writing and explain the basis for its decision.

(e) Continued operation and maintenance

Each water system shall maintain lead and copper levels below the maximum permissible concentrations designated by the Executive Secretary at each sampling point monitored in accordance with R309-104-4.2.6. The system is out of compliance with this paragraph if the level of lead or copper at any sampling point is greater than the maximum permissible concentration designated by the Executive Secretary.

(f) Modification of treatment decisions

Upon its own initiative or in response to a request by a water system or other interested party, the Executive Secretary may modify its determination of the source water treatment under R309-104-4.2.4.b.2(b), or maximum permissible lead and copper concentrations for finished water entering the distribution system under R309-104-4.2.4.b.2(d). A request for modification by a system or other interested party shall: be in writing, explain why the modification is appropriate, and provide supporting documentation. The Executive Secretary may modify the determination where it concludes that such change is necessary to ensure that the system continues to minimize lead and copper concentrations in source water. A revised determination shall: be made in writing, set forth the new treatment requirements, explain the basis for the Executive Secretary's decision, and provide an implementation schedule for completing the treatment modifications.

c. Lead service line replacement requirements.

1. Systems that fail to meet the lead action level in tap samples taken pursuant to R309-104-4.2.3.d.2., after installing corrosion control and/or source water treatment (whichever sampling occurs later), shall replace lead service lines in accordance with the requirements of this section. If a system is in violation of R309-104-4.2.2. or R309-104-4.2.4.b. for failure to install source water or corrosion control treatment, the Executive Secretary may require the system to commence lead service line replacement under this section after the date by which the system was required to conduct monitoring under R309-104-4.2.3.d.2. has passed.

2. A system shall replace annually at least 7 percent of the initial number of lead service lines in its distribution system. The initial number of lead service lines is the number of lead lines in place at the time the replacement program begins. The system shall identify the initial number of lead service lines in its distribution system based upon a materials evaluation, including the evaluation required under R309-104-4.2.3.a. The first year of lead service line replacement shall begin on the date the action level was exceeded in tap sampling referenced in R309-104-4.2.4.c.1.

3. A system is not required to replace an individual lead service line if the lead concentration in all service line samples from that line, taken pursuant to R309-104-4.2.3.b.3., is less than or equal to 0.015 mg/l.

4. A water system shall replace the entire service line (up to the building inlet) unless it demonstrates to the satisfaction of the Executive Secretary under R309-104-4.2.4.c.5. that it controls less than the entire service line. In such cases, the system shall replace the portion of the line which the Executive Secretary determines is under the system's control. The system shall notify the user served by the line that the system will replace the portion of the service line under its control and shall offer to replace the building owner's portion of the line, but is not required to bear the cost of replacing the building owner's portion of the line. For buildings where only a portion of the lead service line is replaced, the water system shall inform the resident(s) that the system will collect a first flush tap water sample after partial replacement of the service line is completed if the resident(s) so desire. In cases where the resident(s) accept the offer, the system shall collect the sample and report the results to the resident(s) within 14 days following partial lead service line replacement.

5. A water system is presumed to control the entire lead service line (up to the building inlet) unless the system demonstrates to the satisfaction of the Executive Secretary, in a letter submitted under R309-104-4.2.8.e.4., that it does not have any of the following forms of control over the entire line (as defined by state statutes, municipal ordinances, public service contracts or other applicable legal authority): authority to set standards for construction, repair, or maintenance of the line, authority to replace, repair, or maintain the service line, or ownership of the service line. The Executive Secretary shall review the information supplied by the system and determine whether the system controls less than the entire service line and, in such cases, shall determine the extent of the system's control. The Executive Secretary's determination shall be in writing and explain the basis for the decision.

6. The Executive Secretary shall require a system to replace lead service lines on a shorter schedule than that required by this section, taking into account the number of lead service lines in the system, where such a shorter replacement schedule is feasible. The Executive Secretary shall make this determination in writing and notify the system of its finding within 6 months after the system is triggered into lead service line replacement based on monitoring referenced in R309-104-4.2.4.c.1.

7. Any system may cease replacing lead service lines whenever first draw samples collected pursuant to R309-104-4.2.3.b.2. meet the lead action level during each of two consecutive monitoring periods and the system submits the results to the Executive Secretary. If first draw tap samples collected in any such water system thereafter exceeds the lead action level, the system shall recommence replacing lead service lines, pursuant to R309-104-4.2.4.c.2.

8. To demonstrate compliance with R309-104-4.2.4.c.1 through R309-104-4.2.4.c.4., a system shall report to the Executive Secretary the information specified in R309-104-4.2.8.e.

4.2.5. Monitoring requirements for water quality parameters.

All large water systems and all small and medium-size systems that exceed the lead or copper action level shall monitor water quality parameters in addition to lead and copper in accordance with this section.

a. General Requirements

1. Sample collection methods

(a) Tap samples shall be representative of water quality throughout the distribution system taking into account the number of persons served, the different sources of water, the different treatment methods employed by the system, and seasonal variability. Tap sampling under this section is not required to be conducted at taps targeted for lead and copper sampling under R309-104-4.2.3.a.

(b) Samples collected at the entry point(s) to the distribution system shall be from locations representative of each source after treatment. If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water is representative of all sources being used).

2. Number of samples

(a) Systems shall collect two tap samples for applicable water quality parameters during each monitoring period specified under R309-104-4.2.5.b. through R309-104-4.2.5.e. from the following number of sites in Table 104-3.

TABLE 104-3
NUMBER OF WATER QUALITY PARAMETER SAMPLE SITES

System Size (# People Served)	# of Sites For Water Quality Parameters
Greater than 100,000	25
10,001-100,000	10
3,301 to 10,000	3
501 to 3,300	2
101 to 500	1
100 or less	1

(b) Systems shall collect two samples for each applicable water quality parameter at each entry point to the distribution system during each monitoring period specified in R309-104-4.2.5.b. Systems shall collect one sample for each applicable water quality parameter at each entry point to the distribution system during each monitoring period specified in R309-104-4.2.5.c. through R309-104-4.2.5.e.

b. Initial Sampling

All large water systems shall measure the applicable water quality parameters as specified below at taps and at each entry point to the distribution system during each six-month monitoring period specified in R309-104-4.2.3.d.1. All small and medium-size systems shall measure the applicable water quality parameters at the locations specified below during each six-month monitoring period specified in R309-104-4.2.3.d.1. during which the system exceeds the lead or copper action level.

1. At taps:

(a) pH;

(b) alkalinity;

(c) orthophosphate, when an inhibitor containing a phosphate compound is used;

(d) silica, when an inhibitor containing a silicate compound is used;

(e) calcium;

(f) conductivity; and

(g) water temperature.

2. At each entry point to the distribution system: all of the applicable parameters listed in R309-104-4.2.5.b.1.

c. Monitoring after installation of corrosion control

Any large system which installs optimal corrosion control treatment pursuant to R309-104-4.2.2.d.4. shall measure the water quality parameters at the locations and frequencies specified below during each six-month monitoring period specified in R309-104-4.2.3.d.2(a). Any small or medium-size system which installs optimal corrosion control treatment shall conduct such monitoring during each six-month monitoring period specified in R309-104-4.2.3.d.2(b) in which the system exceeds the lead or copper action level.

1. At taps, two samples for:

(a) pH;

(b) alkalinity;

(c) orthophosphate, when an inhibitor containing a phosphate compound is used;

(d) silica, when an inhibitor containing a silicate compound is used;

(e) calcium, when calcium carbonate stabilization is used as part of corrosion control.

2. At each entry point to the distribution system, one sample every two weeks (bi-weekly) for:

(a) pH;

(b) when alkalinity is adjusted as part of optimal corrosion control, a reading of the dosage rate of the chemical used to adjust alkalinity, and the alkalinity concentration; and

(c) when a corrosion inhibitor is used as part of optimal corrosion control, a reading of the dosage rate of the inhibitor used, and the concentration of orthophosphate or silica (whichever is applicable).

d. Monitoring after Executive Secretary specifies water quality parameter values for optimal corrosion control.

After the Executive Secretary specifies the values for applicable water quality control parameters reflecting optimal corrosion control treatment under R309-104-4.2.4.a.6., all large systems shall measure the applicable water quality parameters in accordance with R309-104-4.2.5.c. during each monitoring period specified in R309-104-4.2.3.d.3. Any small or medium-size system shall conduct such monitoring during each monitoring period specified in R309-104-4.2.3.d.3. in which the system exceeds the lead or copper action level. The system may take a confirmation sample for any water quality parameter value no later than 3 days after the first sample. If a confirmation sample is taken, the result must be averaged with the first sampling result and the average must be used for any compliance determinations under R309-104-4.2.4.a.7. The Executive Secretary has the discretion to delete results of obvious sampling or laboratory errors from this calculation.

e. Reduced monitoring

1. Any water system that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment during each of two consecutive six-month monitoring periods under R309-104-4.2.5.d. shall continue monitoring at the entry point(s) to the distribution system as specified in R309-104-4.2.5.c.2. Such system may collect two tap samples for applicable water quality parameters from the following reduced number of sites in Table 104-4 during each six-month monitoring period.

TABLE 104-4
REDUCED NUMBER OF WATER QUALITY PARAMETER SAMPLE SITES

System Size (# People Served)	Reduced # of Sites for Water Quality Parameters
Greater than 100,000	10
10,001 to 100,000	7
3,301 to 10,000	3
501 to 3,300	2
101 to 500	1
100 or less	1

2. Any water system that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the Executive Secretary under R309-104-4.2.4.a.6. during three consecutive years of monitoring may reduce the frequency with which it collects the number of tap samples for applicable water quality parameters specified in R309-104-4.2.5.e.1., Table 104-4, from every six months to annually. Any water system that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the Executive Secretary under R309-104-4.2.4.a.6. during three consecutive years of annual monitoring may reduce the frequency with which it collects the number of tap samples for applicable water quality parameters specified in R309-104-4.2.5.e.1., Table 104-4, from annually to every three years.

3. A water system that conducts sampling annually shall collect these samples evenly throughout the year so as to reflect seasonal variability.

4. Any water system subject to the reduced monitoring frequency that fails to operate within the range of values for the water quality parameters specified by the Executive Secretary in R309-104-4.2.4.a.6. shall resume tap water sampling in accordance with the number and frequency requirements in R309-104-4.2.5.d.

f. Additional monitoring by systems

The results of any monitoring conducted in addition to the minimum requirements of this section shall be considered by the system and the Executive Secretary in making any determinations (i.e., determining concentrations of water quality parameters) under this section or R309-104-4.2.4.a.

g. The Executive Secretary has the authority to allow the use of previously collected monitoring data for purposes of monitoring, if the data were collected in accordance with this section and analyzed in accordance with R309-104-3.

4.2.6 Monitoring requirements for lead and copper in source water.

a. Sample location, collection methods, and number of samples

1. A water system that fails to meet the lead or copper action level on the basis of tap samples collected in accordance with R309-104-4.2.3 shall collect lead and copper source water samples in accordance with the requirements regarding sample location, number of samples, and collection methods specified in R309-104-4.3.1.a. - d. at the time intervals specified in R309-104-4.2.6.b. and c.

2. Where the results of sampling indicate an exceedance of maximum permissible source water levels established under R309-104-4.2.4.b.2(d), the Executive Secretary may require that one additional sample be collected as soon as possible after the initial sample was taken (but not to exceed two weeks) at the same sampling point. If a confirmation sample is taken for lead or copper, then the results of the initial and confirmation sample shall be averaged in determining compliance with the specified maximum permissible levels. Any sample value below the detection limit shall be considered to be zero. Any value above the detection limit but below the PQL shall either be considered as the measured value or be considered one-half the PQL.

b. Monitoring frequency after system exceeds tap water action level.

Any system which exceeds the lead or copper action level at the tap shall collect one source water sample from each entry point to the distribution system within six months after the exceedance.

c. Monitoring frequency after installation of source water treatment.

Any system which installs source water treatment pursuant to R309-104-4.2.4.b.1(c) shall collect an additional source water sample from each entry point to the distribution system during two consecutive six-month monitoring periods by the deadline specified in R309-104-4.2.4.b.1(d).

d. Monitoring frequency after Executive Secretary specifies maximum permissible source water levels or determines that source water treatment is not needed

1. A system shall monitor at the frequency specified below in cases where the Executive Secretary specifies maximum permissible source water levels under R309-104-4.2.4.b.2(d) or determines that the system is not required to install source water treatment under R309-104-4.2.4.b.2(b).

(a) A water system using only groundwater shall collect samples once during the three-year compliance period in effect when the applicable determination under R309-104-4.2.6.d.1. is made. Such systems shall collect samples once during each subsequent compliance period.

(b) A water system using surface water (or a combination of surface and groundwater) shall collect samples once during each year, the first annual monitoring period to begin on the date on which the applicable determination is made under R309-104-4.2.6.d.1.

2. A system is not required to conduct source water sampling for lead and/or copper if the system meets the action level for the specific contaminant in tap water samples during the entire source water sampling period applicable to the system under R309-104-4.2.6.d.1(a) or (b).

e. Reduced monitoring frequency

1. A water system using only groundwater which demonstrates that finished drinking water entering the distribution system has been maintained below the maximum permissible lead and/or copper concentrations specified by the Executive Secretary in R309-104-4.2.4.b.2(d) during at least three consecutive compliance periods under R309-104-4.2.6.d.1. may reduce the monitoring frequency for lead and/or copper to once during each nine-year compliance cycle.

2. A water system using surface water (or a combination of surface and ground waters) which demonstrates that finished drinking water entering the distribution system has been maintained below the maximum permissible lead and copper concentrations specified by the Executive Secretary in R309-104-4.2.4.b.2(d) for at least three consecutive years may reduce the monitoring frequency in R309-104-4.2.6.d.1. to once during each nine-year compliance cycle.

3. A water system that uses a new source of water is not eligible for reduced monitoring for lead and/or copper until concentrations in samples collected from the new source during three consecutive monitoring periods are below the maximum permissible lead and copper concentrations specified by the Executive Secretary in R309-104-4.2.4.b.1(e).

4. The Executive Secretary has the authority to allow the use of previously collected monitoring data for purposes of monitoring, if the data were collected in accordance with this section and analyzed in accordance with R309-104-3.

4.2.7 Public education and supplemental monitoring requirements.

A water system that exceeds the lead action level based on tap water samples collected in accordance with R309-104-4.2.3 shall deliver the public education materials contained in R309-104-4.2.7.a. and b. in accordance with the requirements in R309-104-4.2.7.c.

a. Content of written materials. A water system shall include the following text in all of the printed materials it distributes through its lead public education program. Any additional information presented by a system shall be consistent with the information below and be in plain English that can be understood by laypersons.

1. INTRODUCTION

The United States Environmental Protection Agency (EPA) and (insert name of water supplier) are concerned about lead in your drinking water. Although most homes have very low levels of lead in their drinking water, some homes in the community have lead levels above the EPA action level of 15 parts per billion (ppb), or 0.015 milligrams of lead per liter of water (mg/l). Under Federal law we are required to have a program in place to minimize lead in your drinking water by (insert date when corrosion control will be completed for your system). This program includes corrosion control treatment, source water treatment, and public education. We are also required to replace each lead service line that we control if the line contributes lead concentrations of more than 15 ppb after we have completed the comprehensive treatment program. If you have any questions about how we are carrying out the requirements of the lead regulation please give us a call at (insert water system's phone number). This brochure explains the simple steps you can take to protect you and your family by reducing your exposure to lead in drinking water.

2. HEALTH EFFECTS OF LEAD

Lead is a common metal found throughout the environment in lead-based paint, air, soil, household dust, food, certain types of pottery porcelain and pewter, and water. Lead can pose a significant risk to your health if too much of it enters your body. Lead builds up in the body over many years and can cause damage to the brain, red blood cells and kidneys. The greatest risk is to young children and pregnant women. Amounts of lead that won't hurt adults can slow down normal mental and physical development of growing bodies. In addition, a child at play often comes into contact with sources of lead contamination -- like dirt and dust -- that rarely affect an adult. It is important to wash children's hands and toys often, and to try to make sure they only put food in their mouths.

3. LEAD IN DRINKING WATER

(a) Lead in drinking water, although rarely the sole cause of lead poisoning, can significantly increase a person's total lead exposure, particularly the exposure of infants who drink baby formulas and concentrated juices that are mixed with water. The EPA estimates that drinking water can make up 20 percent or more of a person's total exposure to lead.

(b) Lead is unusual among drinking water contaminants in that it seldom occurs naturally in water supplies like rivers and lakes. Lead enters drinking water primarily as a result of the corrosion, or wearing away, of materials containing lead in the water distribution system and household plumbing. These materials include lead-based solder used to join copper pipe, brass and chrome plated brass faucets, and in some cases, pipes made of lead that connect your house to the water main (service lines). In 1986, Congress banned the use of lead solder containing greater than 0.2% lead, and restricted the lead content of faucets, pipes and other plumbing materials to 8.0%.

(c) When water stands in lead pipes or plumbing systems containing lead for several hours or more, the lead may dissolve into your drinking water. This means the first water drawn from the tap in the morning, or later in the afternoon after returning from work or school, can contain fairly high levels of lead.

4. STEPS YOU CAN TAKE IN THE HOME TO REDUCE EXPOSURE TO LEAD IN DRINKING WATER

(a) Despite our best efforts mentioned earlier to control water corrosivity and remove lead from the water supply, lead levels in some homes or buildings can be high. To find out whether you need to take action in your own home, have your drinking water tested to determine if it contains excessive concentrations of lead. Testing the water is essential because you cannot see, taste, or smell lead in drinking water. Some local laboratories that can provide this service are listed at the end of this booklet. For more information on having your water tested, please call (insert phone number of water system).

(b) If a water test indicates that the drinking water drawn from a tap in your home contains lead above 15 ppb, then you should take the following precautions:

(1) Let the water run from the tap before using it for drinking or cooking any time the water in a faucet has gone unused for more than six hours. The longer water resides in your home's plumbing the more lead it may contain. Flushing the tap means running the cold water faucet until the water gets noticeably colder, usually about 15-30 seconds. If your house has a lead service line to the water main, you may have to flush the water for a longer time, perhaps one minute, before drinking. Although toilet flushing or showering flushes water through a portion of your home's plumbing system, you still need to flush the water in each faucet before using it for drinking or cooking. Flushing tap water is a simple and inexpensive measure you can take to protect your family's health. It usually uses less than one or two gallons of water and costs less than (insert a cost estimate based on flushing two times a day for 30 days) per month. To conserve water, fill a couple of bottles for drinking water after flushing the tap, and whenever possible use the first flush water to wash the dishes or water the plants. If you live in a high-rise building, letting the water flow before using it may not work to lessen your risk from lead. The plumbing systems have more, and sometimes larger pipes than smaller buildings. Ask your landlord for help in locating the source of the lead and for advice on reducing the lead level.

(2) Try not to cook with, or drink water from the hot water tap. Hot water can dissolve more lead more quickly than cold water. If you need hot water, draw water from the cold tap and heat it on the stove.

(3) Remove loose lead solder and debris from the plumbing materials installed in newly constructed homes, or homes in which the plumbing has recently been replaced, by removing the faucet strainers from all taps and running the water from 3 to 5 minutes. Thereafter, periodically remove the strainers and flush out any debris that has accumulated over time.

(4) If your copper pipes are joined with lead solder that has been installed illegally since it was banned in 1986, notify the plumber who did the work and request that he or she replace the lead solder with lead-free solder. Lead solder looks dull gray, and when scratched with a key looks shiny. In addition, notify your local plumbing inspector and the State Department of Commerce about the violation.

(5) Determine whether or not the service line that connects your home or apartment to the water main is made of lead. The best way to determine if your service line is made of lead is by either hiring a licensed plumber to inspect the line or by contacting the plumbing contractor who installed the line. You can identify the plumbing contractor by checking the city's record of building permits which should be maintained in the files of the (insert name of department that issues building permits). A licensed plumber can at the same time check to see if your homes's plumbing contains lead solder, lead pipes, or pipe fittings that contain lead. The public water system that delivers water to your home should also maintain records of the materials located in the distribution system. If the service line that connects your dwelling to the water main contributes more than 15 ppb to drinking water, after our comprehensive treatment program is in place, we are required to replace the line. If the line is only partially controlled by the (insert name of the city, county, or water system that controls the line), we are required to provide you with information on how to replace your portion of the service line, and offer to replace that portion of the line at your expense and take a follow-up tap water sample within 14 days of the replacement. Acceptable replacement alternatives include copper, steel, iron, and plastic pipes.

(6) Have an electrician check your wiring. If grounding wires from the electrical system are attached to your pipes, corrosion may be greater. Check with a licensed electrician or your local electrical code to determine if your wiring can be grounded elsewhere. DO NOT attempt to change the wiring yourself because improper grounding can cause electrical shock and fire hazards.

(c) The steps described above will reduce the lead concentrations in your drinking water. However, if a water test indicates that the drinking water coming from your tap contains lead concentrations in excess of 15 ppb after flushing, or after we have completed our actions to minimize lead levels, then you may want to take the following additional measures:

(1) Purchase or lease a home treatment device. Home treatment devices are limited in that each unit treats only the water that flows from the faucet to which it is connected, and all of the devices require periodic maintenance and replacement. Devices such as reverse osmosis systems or distillers can effectively remove lead from your drinking water. Some activated carbon filters may reduce lead levels at the tap, however all lead reduction claims should be investigated. Be sure to check the actual performance of a specific home treatment device before and after installing the unit.

(2) Purchase bottled water for drinking and cooking.

(d) You can consult a variety of sources for additional information. Your family doctor or pediatrician can perform a blood test for lead and provide you with information about the health effects of lead. State and local government agencies that can be contacted include:

(1) (insert the name of city or county department of public utilities) at (insert phone number) can provide you with information about your community's water supply, and a list of local laboratories that have been certified by EPA for testing water quality;

(2) (insert the name of city or county department that issues building permits) at (insert phone number) can provide you with information about building permit records that should contain the names of plumbing contractors that plumbed your home; and

(3) The State Division of Drinking Water at 538-6159 or the (insert the name of the city or county health department) at (insert phone number) can provide you with information about the health effects of lead and how you can have your child's blood tested.

(e) The following is a list of some State approved laboratories in your area that you can call to have your water tested for lead. (Insert names and phone numbers of at least two laboratories).

b. Content of broadcast materials. A water system shall include the following information in all public service announcements submitted under its lead public education program to television and radio stations for broadcasting:

1. Why should everyone want to know the facts about lead and drinking water? Because unhealthy amounts of lead can enter drinking water through the plumbing in your home. That's why I urge you to do what I did. I had my water tested for (insert free or $ per sample). You can contact the (insert the name of the city or water system) for information on testing and on simple ways to reduce your exposure to lead in drinking water.

2. To have your water tested for lead, or to get more information about this public health concern, please call (insert the phone number of the city or water system).

c. Delivery of a public education program

1. In communities where a significant proportion of the population speaks a language other than English, public education materials shall be communicated in the appropriate language(s).

2. A community water system that fails to meet the lead action level on the basis of tap water samples collected in accordance with R309-104-4.2.3. shall, within 60 days:

(a) insert notices in each customer's water utility bill containing the information in R309-104-4.2.7.a., along with the following alert on the water bill itself in large print: "SOME HOMES IN THIS COMMUNITY HAVE ELEVATED LEAD LEVELS IN THEIR DRINKING WATER. LEAD CAN POSE A SIGNIFICANT RISK TO YOUR HEALTH. PLEASE

READ THE ENCLOSED NOTICE FOR FURTHER INFORMATION."

(b) submit the information in R309-104-4.2.7.a. to the editorial departments of the major daily and weekly newspapers circulated throughout the community.

(c) deliver pamphlets and/or brochures that contain the public education materials in R309-104-4.2.7.a.2. and a.4. to facilities and organizations, including the following:

(1) public schools and/or local school boards;

(2) city or county health department;

(3) Women, Infants, and Children and/or Head Start Program(s) whenever available;

(4) public and private hospitals and/or clinics;

(5) pediatricians;

(6) family planning clinics; and

(7) local welfare agencies.

(d) submit the public service announcement in R309-104-4.2.7.b. to at least five of the radio and television stations with the largest audiences that broadcast to the community served by the water system.

3. A community water system shall repeat the tasks contained in Subsections R309-104-4.2.7.c.2.(a), (b) and (c) every 12 months, and the tasks contained in Subsection R309-104-4.2.7.c.2.(d) every 6 months for as long as the system exceeds the lead action level.

4. Within 60 days after it exceeds the lead action level, a non-transient non-community water system shall deliver the public education materials contained in R309-104-4.2.7.a.1., 2., and 4. as follows:

(a) post informational posters on lead in drinking water in a public place or common area in each of the buildings served by the system; and

(b) distribute informational pamphlets and/or brochures on lead in drinking water to each person served by the non-transient non-community water system.

5. A non-transient non-community water system shall repeat the tasks contained in R309-104-4.2.7.c.4. at least once during each calendar year in which the system exceeds the lead action level.

6. A water system may discontinue delivery of public education materials if the system has met the lead action level during the most recent six-month monitoring period conducted pursuant to R309-104-4.2.3. Such a system shall recommence public education in accordance with this section if it subsequently exceeds the lead action level during any monitoring period.

d. Supplemental monitoring and notification of results.

A water system that fails to meet the lead action level on the basis of tap samples collected in accordance with R309-104-4.2.3 shall offer to sample the tap water of any customer who requests it. The system is not required to pay for collecting or analyzing the sample, nor is the system required to collect and analyze the sample itself.

4.2.8. Reporting requirements.

All water systems shall report all of the following information to the Executive Secretary in accordance with this section.

a. Reporting requirements for tap water monitoring for lead and copper and for water quality parameter monitoring

1. A water system shall report the information specified below for all tap water samples within the first 10 days following the end of each applicable monitoring period specified in R309-104-4.2.3 and R309-104-4.2.5 and R309-104-4.2.6 (i.e., every six-months, annually, or every 3 years).

(a) the results of all tap samples for lead and copper including the location of each site and the criteria under R309-104-4.2.3a.3.,4.,5.,6., and 7. under which the site was selected for the system's sampling pool;

(b) a certification that each first draw sample collected by the water system is one-liter in volume and, to the best of their knowledge, has stood motionless in the service line, or in the interior plumbing of a sampling site, for at least six hours;

(c) where residents collected samples, a certification that each tap sample collected by the residents was taken after the water system informed them of proper sampling procedures specified in R309-104-4.2.3.b.2;

(d) the 90th percentile lead and copper concentrations measured from among all lead and copper tap water samples collected during each monitoring period;

(e) with the exception of initial tap sampling conducted pursuant to R309-104-4.2.3.d.1, the system shall designate any site which was not sampled during previous monitoring periods, and include an explanation of why sampling sites have changed;

(f) the results of all tap samples for pH, and where applicable, alkalinity, calcium, conductivity, temperature, and orthophosphate or silica collected under R309-104-4.2.5.b.-e.;

(g) the results of all samples collected at the entry point(s) to the distribution system for applicable water quality parameters under R309-104-4.2.5.b.- e.

2. By the applicable date in R309-104-4.2.3.d.1. for commencement of monitoring, each community water system which does not complete its targeted sampling pool with tier 1 sampling sites meeting the criteria in R309-104-4.2.3.a.3. shall send a letter to the Executive Secretary justifying its selection of tier 2 or tier 3 sampling sites under R309-104-4.2.3.a.4. and a.5.

3. By the applicable date in R309-104-4.2.3.d.1. for commencement of monitoring, each non-transient non-community water system which does not complete its sampling pool with tier 1 sampling sites meeting the criteria in R309-104-4.2.3.a.6. shall send a letter to the Executive Secretary justifying its selection of sampling sites under R309-104-4.2.3.a.7.

4. By the applicable date in R309-104-4.2.3.d.1. for commencement of monitoring, each water system with lead service lines that is not able to locate the number of sites served by such lines required under R309-104-4.2.3.a.9. shall send a letter to the Executive Secretary demonstrating why it was unable to locate a sufficient number of such sites based upon the information listed in R309-104-4.2.3.a.2.

5. Each water system that requests that the Executive Secretary reduce the number and frequency of sampling shall provide the information required under R309-104-4.2.3.d.4.

b. Source water monitoring reporting requirements

1. A water system shall report the sampling results for all source water samples collected in accordance with R309-104-4.2.6. within the first 10 days following the end of each source water monitoring period (i.e., annually, per compliance period, per compliance cycle) specified in R309-104-4.2.6.

2. With the exception of the first round of source water

sampling conducted pursuant to R309-104-4.2.6.b., the system shall specify any site which was not sampled during previous monitoring periods, and include an explanation of why the sampling point has changed.

c. Corrosion control treatment reporting requirements

By the applicable dates under R309-104-4.2.2., systems shall report the following information:

1. for systems demonstrating that they have already optimized corrosion control, information required in R309-104-4.2.2.b.2 or R309-104-4.2.2.b.3.

2. for systems required to optimize corrosion control, their recommendation regarding optimal corrosion control treatment under R309-104-4.2.4.a.1.

3. for systems required to evaluate the effectiveness of corrosion control treatments under R309-104-4.2.4.a.3., the information required by that paragraph.

4. for systems required to install optimal corrosion control designated by the Executive Secretary under R309-104-4.2.4.a.4., a letter certifying that the system has completed installing that treatment.

d. Source water treatment reporting requirements

By the applicable dates in R309-104-4.2.4.b., systems shall provide the following information to the Executive Secretary :

1. if required under R309-104-4.2.4.b.2(a), their recommendation regarding source water treatment;

2. for systems required to install source water treatment under R309-104-4.2.4.b.2(b), a letter certifying that the system has completed installing the treatment designated by the Executive Secretary within 24 months after the Executive Secretary designated the treatment.

e. Lead service line replacement reporting requirements

Systems shall report the following information to the Executive Secretary to demonstrate compliance with the requirements of R309-104-4.2.4.c:

1. Within 12 months after a system exceeds the lead action level in sampling referred to in R309-104-4.2.4.c.1., the system shall demonstrate in writing to the Executive Secretary that it has conducted a materials evaluation, including the evaluation in R309-104-4.2.3.a., to identify the initial number of lead service lines in its distribution system, and shall provide the Executive Secretary with the system's schedule for replacing annually at least 7 percent of the initial number of lead service lines in its distribution system.

2. Within 12 months after a system exceeds the lead action level in sampling referred to in R309-104-4.2.4.c.1., and every 12 months thereafter, the system shall demonstrate to the Executive Secretary in writing that the system has either:

(a) replaced in the previous 12 months at least 7 percent of the initial lead service lines (or a greater number of lines specified by the Executive Secretary under R309-104-4.2.4.c.6.) in its distribution system, or

(b) conducted sampling which demonstrates that the lead concentration in all service line samples from an individual line(s), taken pursuant to R309-104-4.2.3.b.3, is less than or equal to 0.015 mg/l. In such cases, the total number of lines replaced or which meet the criteria in R309-104-4.2.4.c.3. shall equal at least 7 percent of the initial number of lead lines identified under R309-104-4.2.8.a. (or the percentage specified by the Executive Secretary under R309-104-4.2.4.c.6.).

3. The annual letter submitted to the Executive Secretary under R309-104-4.2.8.e.2. shall contain the following information:

(a) the number of lead service lines scheduled to be replaced during the previous year of the system's replacement schedule;

(b) the number and location of each lead service line replaced during the previous year of the system's replacement schedule;

(c) if measured, the water lead concentration and location of each lead service line sampled, the sampling method, and the date of sampling.

4. As soon as practicable, but in no case later than three months after a system exceeds the lead action level in sampling referred to in R309-104-4.2.4.c.1., any system seeking to rebut the presumption that it has control over the entire lead service line pursuant to R309-104-4.2.4.c.4. shall submit a letter to the Executive Secretary describing the legal authority (e.g., state statutes, municipal ordinances, public service contracts or other applicable legal authority) which limits the system's control over the service lines and the extent of the system's control.

f. Public education program reporting requirements

By December 31st of each year, any water system that is subject to the public education requirements in R309-104-4.2.7. shall submit a letter to the Executive Secretary demonstrating that the system has delivered the public education materials that meet the requirements in R309-104-4.2.7.a. and b. and the delivery requirements in R309-104-4.2.7.c. This information shall include a list of all the newspapers, radio stations, television stations, facilities and organizations to which the system delivered public education materials during the previous year. The water system shall submit the letter required by this paragraph annually for as long as it exceeds the lead action level.

g. Reporting of additional monitoring data

Any system which collects sampling data in addition to that required by this subpart shall report the results to the Executive Secretary by the end of the applicable monitoring period under R309-104-4.2.3, R309-104-4.2.5 and R309-104-4.2.6. during which the samples are collected.

4.3 Organic Contaminants

For the purposes of R309-101. through R309-113., organic chemicals are divided into three categories: Pesticides/PCBs/SOCs, volatile organic contaminants (VOCs) and total trihalomethanes.

4.3.1 Pesticides/PCBs/SOCs monitoring requirements.

Analysis of the contaminants listed in R309-103-2.3.a for the purposes of determining compliance with the maximum contaminant level shall be conducted as follows:

a. Groundwater systems shall take a minimum of one sample at every entry point to the distribution system which is representative of each well after treatment (hereafter called a sampling point). Each sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

b. Surface water systems shall take a minimum of one sample at points in the distribution system that are representative of each source or at each entry point to the distribution system after treatment (hereafter called a sampling

point). Each sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant. (Note: For purposes of this paragraph, surface water systems include systems with a combination of surface and ground sources.)

c. If the system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water representative of all sources is being used).

d. Monitoring frequency:

1. Each community and non-transient non-community water system shall take four consecutive quarterly samples for each contaminant listed in R309-103-2.3.a during each compliance period beginning with the compliance period starting January 1, 1993. For systems serving less than 3,300, this requirement may be reduced to one sample if the sample is taken prior to October 1, 1993.

2. Systems serving more than 3,300 persons which do not detect a contaminant in the initial compliance period, may reduce the sampling frequency to a minimum of two quarterly samples in one year during each repeat compliance period.

3. Systems serving less than or equal to 3,300 persons which do not detect a contaminant in the initial compliance period may reduce the sampling frequency to a minimum of one sample during each repeat compliance period.

e. Each community and non-transient non-community water system may apply to the Executive Secretary for a waiver from the requirement of paragraph 4.3.1.d of this section. A system must reapply for a waiver for each compliance period.

f. The Executive Secretary may grant: a use waiver, a susceptibility waiver or a reliably and consistently waiver. The use and susceptibility waivers shall be granted in accordance with R309-113-15. The reliably and consistently waiver shall be based on a minimum of three rounds of monitoring where the results of analysis for all constituents show that no contaminant is detected, or that the detected amount of a contaminant is less than half the MCL.

If a use waiver is granted no monitoring for pesticides/PCBs/SOCs will be required, provided documentation consistent with R309-113-15 and justifying the continuence of a use waiver is submitted to the Executive Secretary at least every six years.

If a susceptibility waiver or a reliably and consistently waiver is granted, monitoring for pesticides/PCBs/SOCs shall be preformed as listed below, provided documentation consistent with R309-113-15 and justifying the continuence of a susceptibility waiver is submitted to the Executive Secretary at least every six years or in the case of a reliably and consistently waiver that the analytical results justify the continuence of the reliably and consistently waiver.

1. For community and non-transient non comunity systems serving populations greater than 3,300 people, samples for pesticides/PCBs/SOCs shall be taken in two consecutive quarters every three years.

2. For community and non-transient non community systems serving populations less than 3,301 people, samples for pesticides/PCBs/SOCs shall be taken every three years.

g. If an organic contaminant listed in R309-103-2.3.a is detected in any sample, then:

1. Each system must monitor quarterly at each sampling point which resulted in a detection.

2. The Executive Secretary may decrease the quarterly monitoring requirement specified in paragraph 4.3.1.g.1 of this section provided it has determined that the system is reliably and consistently below the maximum contaminant level. In no case shall the Executive Secretary make this determination unless a groundwater system takes a minimum of two quarterly samples and a surface water system takes a minimum of four quarterly samples.

3. After the Executive Secretary determines the system is reliably and consistently below the maximum contaminant level the Executive Secretary may allow the system to monitor annually. Systems which monitor annually must monitor during the quarter that previously yielded the highest analytical result.

4. Systems which have 3 consecutive annual samples with no detection of a contaminant may apply to the Executive Secretary for a waiver as specified in paragraph 4.3.1.f of this section.

5. If monitoring results in detection of one or more of certain related contaminants (aldicarb, aldicarb sulfone, aldicarb sulfoxide and heptachlor, heptachlor epoxide), then subsequent monitoring shall analyze for all related contaminants.

h. Systems which violate the maximum contaminant levels of R309-103-2.3.a as determined by paragraph 4.3.1.j of this section must monitor quarterly. After a minimum of four quarterly samples show the system is in compliance and the Executive Secretary determines the system is reliably and consistently below the MCL, as specified in paragraph 4.3.1.j of this section, the system shall monitor at the frequency specified in paragraph 4.3.1.g.3 of this section.

i. The Executive Secretary may require a confirmation sample for positive or negative results. If a confirmation sample is required by the Executive Secretary, the result must be averaged with the first sampling result and the average used for the compliance determination as specified by paragraph 4.3.1.j of this section. The Executive Secretary has the discretion to delete results of obvious sampling errors from this calculation.

j. Compliance with the maximum contaminant levels in R309-103-2.3.a shall be determined based on the analytical results obtained at each sampling point.

1. For systems which are conducting monitoring at a frequency greater than annual, compliance is determined by a running annual average of all samples taken at each sampling point. If the annual average of any sampling point is greater than the MCL, then the system is out of compliance. If the initial sample or a subsequent sample would cause the annual average to be exceeded, then the system is out of compliance immediately. Any samples below the detection limit shall be calculated as zero for purposes of determining the annual average.

2. If monitoring is conducted annually, or less frequently, the system is out of compliance if the level of a contaminant at any sampling point is greater than the MCL. If a confirmation sample is required by the Executive Secretary, the determination of compliance will be based on the average of two samples.

3. If a public water system has a distribution system separable from other parts of the distribution system with no

interconnections, the Executive Secretary may allow the system to give public notice to only that portion of the system which is out of compliance.

k. If monitoring data collected after January 1, 1990, are generally consistent with the other requirements of this section, then the Executive Secretary may allow systems to use that data to satisfy the monitoring requirement for the initial compliance period beginning January 1, 1993.

l. The Executive Secretary may increase the required monitoring frequency, where necessary, to detect variations within the system (e.g., fluctuations in concentration due to seasonal use, changes in water source).

m. The Executive Secretary has the authority to determine compliance or initiate enforcement action based upon analytical results and other information compiled by their sanctioned representatives and agencies.

n. Each public water system shall monitor at the time designated by the Executive Secretary within each compliance period.

4.3.2 Volatile organic contaminants monitoring requirements.

Analysis of the contaminants listed in R309-103-2.3.b for the purpose of determining compliance with the maximum contaminant level shall be conducted as follows:

a. Groundwater systems shall take a minimum of one sample at every entry point to the distribution system which is representative of each well after treatment (hereafter called a sampling point). Each sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source, treatment plant or within the distribution system.

b. Surface water systems (or combined surface/ground) shall take a minimum of one sample at points in the distribution system that are representative of each source or at each entry point to the distribution system after treatment (hereafter called a sampling point). Each sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source, treatment plant, or within the distribution system.

c. If the system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water representative of all sources is being used).

d. Each community and non-transient non-community water system shall initially take four consecutive quarterly samples for each contaminant listed in R309-103-2.3.b.2 through b.21. during each compliance period beginning in the initial compliance period. For systems serving a population of less than 3,300, this requirement may be reduced to one sample if the sample is taken prior to October 1, 1993.

e. If the initial monitoring for contaminants listed in R309-103-2.3.b.2 through b.21. as allowed in paragraph 4.3.2.o has been completed by December 31, 1992, and the system did not detect any contaminant listed in R309-103-2.3.b, then each ground and surface water system shall take one sample annually beginning with the initial compliance period.

f. After a minimum of three years of annual sampling, the Executive Secretary may allow groundwater systems with no previous detection of any contaminant listed in R309-103-2.3.b to take one sample during each compliance period.

g. Each community and non-transient non-community water system which does not detect a contaminant listed in R309-103-2.3.b may apply to the Executive Secretary for a waiver from the requirements of paragraph 4.3.2.e and 4.3.2.f of this section after completing the initial monitoring. (For the purposes of this section, detection is defined as greater than or equal to 0.0005 mg/l.) A waiver shall be effective for no more than six years (two compliance periods). The Executive Secretary may also issue waivers for the initial round of monitoring for 1,2,4-trichlorobenzene.

h. The Executive Secretary may grant: a use waiver, a susceptibility waiver or a reliably and consistently waiver. The use and susceptibility waivers shall be granted in accordance with R309-113-15. The reliably and consistently waiver shall be based on a minimum of three rounds of monitoring where the results of analysis for all constituents show that no contaminant is detected, or that the detected amount of a contaminant is less than half the MCL. To maintain a use waiver or a susceptibility waiver a system shall submit documentation consistent with R309-113-15 which justifies the continuence of a use or a susceptibility waiver at least every six years. For a reliably and consistently waiver, the analytical results for all constituents of all samples must justify its continuence. If a waiver is granted, monitoring for VOCs will be required at least every six years.

i. As a condition of the waiver a groundwater system must take one sample at each sampling point during the time the waiver is effective (i.e., one sample during two compliance periods or six years) and update its source protection plan in accordance with R309-113.

j. If a contaminant listed in R309-103-2.3.b.2 through b.21 is detected at a level exceeding 0.0005 mg/l in any sample, then:

1. The system must monitor quarterly at each sampling point which resulted in a detection.

2. The Executive Secretary may decrease the quarterly monitoring requirement specified in paragraph 4.3.2.k.1 of this section provided it has determined that the system is reliably and consistently below the maximum contaminant level. In no case shall the Executive Secretary make this determination unless a groundwater system takes a minimum of two quarterly samples and a surface water system takes a minimum of four quarterly samples.

3. If the Executive Secretary determines that the system is reliably and consistently below the MCL, the Executive Secretary may allow the system to monitor annually. Systems which monitor annually must monitor during the quarter(s) which previously yielded the highest analytical result.

4. Systems which have three consecutive annual samples with no detection of a contaminant may apply to the Executive Secretary for a waiver as specified in paragraph 4.3.2.g of this section.

5. Groundwater systems which have detected one or more of the following two-carbon organic compounds: trichloroethylene, tetrachloroethylene, 1,2-dichloroethane, 1,1,1-trichloroethane, cis-1,2-dichloroethylene, trans-1,2-dichloroethylene, or 1,1-dichloroethylene shall monitor quarterly for vinyl chloride. A vinyl chloride sample shall be taken at each sampling point at which one or more of the two-

carbon organic compounds were detected. If the results of the first analysis do not detect vinyl chloride, the Executive Secretary may reduce the quarterly monitoring frequency of vinyl chloride monitoring to one sample during each compliance period. Surface water systems are required to monitor for vinyl chloride as specified by the Executive Secretary.

k. Systems which violate the maximum contaminant levels as required in R309-103-2.3.b as determined by paragraph 4.3.2.n of this section must monitor quarterly. After a minimum of four consecutive quarterly samples shows the system is in compliance as specified in paragraph 4.3.2.n of this section, and the Executive Secretary determines that the system is reliably and consistently below the maximum contaminant level, the system may monitor at the frequency and time specified in paragraph 4.3.2.k.3 of this section.

l. The Executive Secretary may require a confirmation sample for positive or negative results. If a confirmation sample is required by the Executive Secretary, the result must be averaged with the first sampling result and the average is used for the compliance determination as specified by paragraph 4.3.2.n of this section. The Executive Secretary has the discretion to delete results of obvious sampling errors from this calculation.

m. Compliance with R309-103-2.3.b shall be determined based on the analytical results obtained at each sampling point.

1. For systems which are conducting monitoring at a frequency greater than annual, compliance is determined by a running annual average of all samples taken at each sampling point. If the annual average of any sampling point is greater than the MCL, then the system is out of compliance. If the initial sample or a subsequent sample would cause the annual average to be exceeded, then the system is out of compliance immediately. Any samples below the detection limit shall be calculated as zero for purposes of determining the annual average.

2. If monitoring is conducted annually, or less frequently, the system is out of compliance if the level of a contaminant at any sampling point is greater than the MCL. If a confirmation sample is required by the Executive Secretary, the determination of compliance will be based on the average of two samples.

3. If a public water system has a distribution system separable from other parts of the distribution system with no interconnections, the Executive Secretary may allow the system to give public notice to only that area served by that portion of the system which is out of compliance.

n. The Executive Secretary may allow the use of monitoring data collected after January 1, 1988 for purposes of monitoring compliance providing that the data is generally consistent with the other requirements in this section, the Executive Secretary may use that data (i.e., a single sample rather than four quarterly samples) to satisfy the initial monitoring requirement of paragraph 4.3.2.d of this section. Systems which use grandfathered samples and did not detect any contaminant listed in R309-103-2.3.b shall begin monitoring annually in accordance with 4.3.2.e of this section.

o. The Executive Secretary may increase required monitoring where necessary to detect variations within the system.

p. Each public water system shall monitor at the time designated by the Executive Secretary within each compliance period.

4.3.3 Monitoring Requirements for Total Trihalomethanes

a. Community water systems serving 10,000 or more people and using disinfection must sample for Total Trihalomethane. Non-transient non-community and non-community water systems are not required to monitor for total trihalomethanes.

1. Groundwater systems may choose to monitor for Total Trihalomethane Formation Potential (THMFP) or TTHM compounds with the approval of the Executive Secretary.

2. Surface water systems must monitor using quarterly routine TTHM quenched samples only. THMFP samples shall not be used to determine compliance with this MCL when surface sources are used.

b. Sampling Locations For Trihalomethanes

1. THMFP samples

A THMFP sample shall be collected in a representative manner at the point of entry to the distribution system following disinfection. One sample must be collected for each disinfected source in duplicate. Compliance for each source is based on measurement of this sample. If the results of this sample are well below 100 micrograms per liter, reduced monitoring can be requested of the Executive Secretary.

2. Routine TTHM Samples

Samples shall be collected from the distribution system for routine TTHM quenched analysis and not the source. At least 25% of all samples collected representing each chlorinated source shall represent the extremes of the distribution system to which disinfected water travels. Operators are required to check for a chlorine residual before collecting any TTHM samples. A chlorine residual of at least 0.2 ppm shall be present at all sampling points.

c. Sampling Frequency for Trihalomethanes

For TTHM samples, four samples, all collected on the same day, shall be collected each calendar quarter representing each disinfected source. All samples shall be collected in duplicate, although laboratories may only analyze one of these. This is a required quality control procedure for each certified laboratory.

For THMFP samples, only one sample need be collected (see R309-104-4.3.3.b above).

d. Reduced Sampling for Trihalomethanes

1. Systems with surface sources which have four consecutive calendar quarters of data may petition the Executive Secretary for reduced monitoring if the MCL has been met. Upon approval of reduced monitoring by the Executive Secretary, surface water sources shall be analyzed at least once per calendar year for TTHM compounds. Subsequent samples shall be collected from the extreme end of the distribution system. A chlorine residual of at least 0.2 ppm shall be present at the point of sampling.

2. Systems with groundwater sources that have either completed a THMFP test or that have completed four consecutive calendar quarters may petition the Executive Secretary for reduced monitoring if the MCL has been met. Upon approval of reduced monitoring by the Executive Secretary, groundwater sources shall be analyzed at least once per year for TTHM compounds. Subsequent samples shall be

collected from the extreme end of the distribution system. A chlorine residual of at least 0.2 ppm shall be present at the point of sampling.

e. Reporting of Results of Trihalomethane Monitoring

All results of TTHM samples shall be reported to the Executive Secretary within 10 days of the receipt of the analysis.

f. Procedures if Total Trihalomethane MCL is Exceeded

1. If the quarterly average of TTHM samples or THMFP samples exceeds 100 micrograms per liter, the Executive Secretary shall be so informed in writing within 10 days of the end of any month in which these analyses were performed.

2. An accelerated sampling program shall be undertaken as determined by the Executive Secretary.

3. Alteration of the existing treatment processes or installation of new processes for TTHM reduction shall be required if an MCL is not met. A compliance schedule shall be established which outlines any pilot studies necessary together with a plan and time schedule for completion of construction which will remedy the MCL violation. Modifications shall not endanger adequate disinfection of water in the system.

4. When an MCL is violated, or is near the limit, action shall be taken by the suppliers involved. Generally, the Executive Secretary will notify the supplier of special sampling which is necessary on a case by case basis.

Two possibilities in this area are:

(a) A wholesaler-retailer relationship. In general, the burden in this case shall be on the supplier adding the disinfectant to show that the results of additional THMFP tests are well within limitations. Additional THMFP tests and TTHM tests may be required of the supplier distributing this water, but not treating it, to clarify the situation. The Executive Secretary shall decide the responsibility in these cases and send written confirmation of this finding to both suppliers involved.

(b) A situation where not all sources on the system are disinfected, yet deliver water to the same system. In this case, the cause of non-compliance must be determined to be either a chlorinated source problem, a non-chlorinated source - chlorinated source interaction, a distribution system reaction, or other. The Executive Secretary shall require such tests as are necessary to resolve the problem.

As with any action, this decision may be appealed to the Utah Drinking Water Board.

5. Notification of State and Public

When the maximum contaminant level as set forth in R309-103-2.3.c is exceeded, the supplier of water shall give public notice as required in R309-104-7.

4.4 Radiological Chemicals

4.4.1 Routine Monitoring Requirements

a. Monitoring requirements for gross alpha particle activity, radium-226 and radium-228.

1. Monitoring frequency for community and non-community systems -

(a) Suppliers of water for community systems shall monitor at least once every four years. Compliance shall be based on the analysis of an annual composite of four consecutive quarterly intervals, or the average of the analysis of four samples obtained at quarterly intervals.

(b) A supplier of water shall monitor for radiological chemicals within one year of the introduction of a new water source for a community water system.

(c) A community water system using two or more sources having different concentrations of radioactivity shall monitor source water, in addition to water from a free-flowing tap, when ordered by the Executive Secretary.

(d) Suppliers of water for non-community systems need not monitor unless specifically directed by the Executive Secretary.

2. Reduction of monitoring requirement -

(a) At the discretion of the Executive Secretary when the average annual concentration is less than half the maximum contaminant levels as established by four consecutive quarterly samples, analysis of a single sample may be substituted for the quarterly sampling procedure.

(b) Monitoring for compliance need not include radium-228 except when required by the Executive Secretary provided that the average annual concentration of radium-228 has been assayed at least once using the quarterly sampling procedure.

3. Increase in monitoring requirements -

(a) More frequent monitoring shall be conducted when ordered by the Executive Secretary in the vicinity of mining or other operations which may contribute alpha particle radioactivity to either surface or ground water sources of drinking water.

(b) More frequent monitoring shall be conducted when ordered by the Executive Secretary in the event of possible contamination or when changes in a distribution system or treatment processing occur which may increase the concentration of radioactivity in finished water.

(c) Suppliers of water shall conduct annual monitoring of any community water system in which the radium-226 concentration exceeds 3 pCi/1, when ordered by the Executive Secretary.

4. Substitution of gross alpha particle activity measurement for radium-226 and radium-228 -

(a) Gross alpha particle activity measurement may be substituted for the required radium-226 and radium-228 analysis provided that the measured gross alpha particle activity does not exceed 5 pCi/1 at a confidence level of 95 percent (1.65 S where S is the standard deviation of the net counting rate of the sample). In localities where radium-228 may be present in drinking water, radium-226 and/or radium-228 analyses must be conducted when the gross alpha particle activity exceeds 2 pCi/1.

(b) When the gross alpha particle activity exceeds 5 pCi/1, the same or an equivalent sample shall be analyzed for radium-226. If the concentration of radium-226 exceeds 3 pCi/1 the same or an equivalent sample shall be analyzed for radium-228.

b. Monitoring requirements for man-made radioactivity in community water systems.

1. Monitoring frequency for community and non-community water systems -

(a) Community water systems using surface water sources and serving more than 100,000 persons and such other community water systems as are designated by the Executive Secretary shall be monitored for compliance by analysis of a composite of four consecutive quarterly samples or analysis of four quarterly samples.

(b) After the initial analysis required by Paragraph a.

(above) community water systems shall monitor at least every four years following the procedure given in Paragraph a.

(c) Suppliers of water for non-community systems need not monitor unless specifically directed by the Executive Secretary.

(d) At the discretion of the Executive Secretary, based on a known hazard taking into account the degree of hazard and the time of travel of the contaminant, suppliers of water utilizing only ground water may be required to monitor for man-made radioactivity.

(e) At any time, based on a known hazard taking into account the degree of hazard and the time of travel of the contaminant, suppliers of water may be required to conduct special additional monitoring, to determine the concentration of manmade radioactivity in principle watersheds designated by the Executive Secretary.

2. Determination of compliance -

(a) Compliance may be assumed without further analysis if the average annual concentration of gross beta particle activity is less than 50 pCi/1 and if the average annual concentrations of tritium and strontium-90 are less than those listed on Table 103-4 provided that if both radionuclides are present the sum of their annual dose equivalents to bone marrow shall not exceed 4 millirem/year.

(b) If the gross beta particle activity exceeds 50 pCi/1, an analysis of the sample must be performed to identify the major radioactivity constituents present and the appropriate organ and total body doses shall be calculated to determine compliance.

3. Systems contaminated by effluents from nuclear facilities -

(a) The supplier of any community water system designated by the Executive Secretary as utilizing waters contaminated by effluents from nuclear facilities shall initiate quarterly monitoring for gross beta particle and iodine-131 radioactivity and annual monitoring for strontium-90 and tritium.

(b) Quarterly monitoring for gross beta particle activity shall be based on the analysis of monthly samples or a composite of three monthly samples. The former is recommended. If the gross beta particle activity in a sample exceeds 15 pCi/1, the same or an equivalent sample shall be analyzed for strontium-89 and cesium-134. If the gross beta particle activity exceeds 50 pCi/1, an analysis of the sample must be performed to identify the major radioactive constituents present and the appropriate organ and total body doses shall be calculated to determine compliance.

(c) For iodine-131, a composite of five consecutive daily samples shall be analyzed once each quarter. As ordered by the Executive Secretary, more frequent monitoring shall be conducted when iodine-131 is identified in the finished water.

(d) Annual monitoring for strontium-90 and tritium shall be conducted by means of the analysis of a composite of four consecutive quarterly samples or analysis of four quarterly samples. The latter procedure is recommended.

(e) The Executive Secretary may allow the substitution of environmental surveillance data taken in conjunction with a nuclear facility for direct monitoring of man-made radioactivity by the supplier of water where the Executive Secretary determines such data is applicable to a particular water system.

4.4.2 Procedures if a Radionuclide MCL is Exceeded

a. Gross alpha and total radium

If the average annual maximum contaminant level for gross alpha particle activity or total radium is exceeded, the supplier of a community water system shall give notice as required by R309-104-7. Monitoring at quarterly intervals shall be continued until the annual average concentration no longer exceeds the maximum contaminant level or until a monitoring schedule as a condition to a variance, exemption or enforcement action shall become effective.

b. Man-made radioactivity

If the average annual maximum contaminant level for man-made radioactivity set forth in R309-103-2.4 is exceeded, the operator of a community water system shall give notice as required by R309-104-7. Monitoring at monthly intervals shall be continued until the concentration no longer exceeds the maximum contaminant level or until a monitoring schedule as a condition to a variance, exemption or enforcement action shall become effective.

c. An appropriate treatment process as approved by the Executive Secretary may be required.

4.5 Turbidity

4.5.1 Routine Monitoring Requirements for Treatment Facilities utilizing surface water sources or ground water sources under the direct influence of surface water.

a. All public water systems which use a treatment technique to treat water obtained in whole or in part from surface water sources or ground water sources under the direct influence of surface water shall monitor for turbidity at the treatment plant's clearwell outlet. This monitoring shall be independent of the individual filter monitoring required by R309-108-12(3)(b)(vi) and R309-108-12(3)(c)(vii). Where the plant facility does not have an internal clearwell, the turbidity must be monitored at the inlet to a finished water reservoir external to the plant provided such reservoir receives only water from the treatment plant and, furthermore, is located before any point of consumer connection to the water system. If such external reservoir does not exist, turbidity must then be monitored at a location immediately downstream of the treatment plant filters.

b. All treatment plants, with the exception of those utilizing slow sand filtration and other conditions indicated in section c. below, shall be equipped with continuous turbidity monitoring and recording equipment for which the direct responsible charge operator will validate the continuous measurements for accuracy in accordance with paragraph d. below. These plants shall continuously record the finished water turbidity.

c. Turbidity measurements, as outlined below, must be reported to the Division of Drinking Water within ten days after the end of each month that the system serves water to the public. Systems are required to mark and interpret turbidity values from the recorded charts at the end of each four-hour interval of operation (or some shorter regular time interval) to determine compliance with the turbidity performance criterion. For systems using slow sand filtration the Executive Secretary may reduce the sampling frequency to as little as once per day if the Executive Secretary determines that less frequent monitoring is sufficient to indicate effective filtration performance. For

systems serving 500 or fewer persons, the Executive Secretary may reduce the turbidity sampling frequency to as little as once per day, regardless of the type of filtration treatment used, if the Executive Secretary determines that less frequent monitoring is sufficient to indicate effective filtration performance.

The following must be reported and the required percentage achieved for compliance:

1. The total number of interpreted filtered water turbidity measurements taken during the month;

2. The number and percentage of interpreted filtered water turbidity measurements taken during the month which are less than or equal to the turbidity limits specified in R309-103-2.5.a.2 (or increased limit approved by the Executive Secretary). The percentage of measurements which are less than or equal to the turbidity limit must be 95 percent or greater for compliance; and

3. The date and value of any turbidity measurements taken during the month which exceed 5 NTU. The system must inform the Division of Drinking Water as soon as possible, but no later than the next business day if any turbidity measurements exceed 5 NTU.

d. The analytical method which must be followed in making the required determinations shall be Nephelometric Method - Nephelometric Turbidity Unit as set forth in the latest edition of Standard Methods for Examination of Water and Wastewater, 1985, American Public Health Association et al., (Method 214A, pp. 134-136 in the 16th edition). Continuous turbidity monitoring equipment must be checked for accuracy and recalibrated using methods outlined in the above standard at a minimum frequency of monthly. The direct responsible charge operator will note on the turbidity report form when these recalibrations are conducted.

4.5.2 Procedures if a Filtered Water Turbidity Limit is Exceeded

a. Resampling -

If an analysis indicates that the turbidity limit has been exceeded, the sampling and measurement shall be confirmed by resampling as soon as practicable and preferably within one hour.

b. If the result of resampling confirms that the turbidity limit has been exceeded, the system shall collect and have analyzed at least one bacteriologic sample near the first service connection from the source as specified in R309-104-4.6.1.f. The system shall collect this bacteriologic sample within 24 hours of the turbidity exceedance. Sample results from this monitoring shall be included in determining bacteriologic compliance for that month.

c. Initial Notification of the State -

If the repeat sample confirms that the turbidity limit has been exceeded, the supplier shall report this fact to the Executive Secretary as soon as possible, but no later than the next business day. This reporting is in addition to reporting the incident on any monthly reports.

4.5.3 Routine Monitoring Requirements for Public Water Systems utilizing Ground Water Sources

The frequency of required turbidity monitoring or the lack of any required monitoring listed below may be increased or changed by the Executive Secretary. Monitoring and reporting of water characteristics such as turbidity, conductivity, pH, and temperature of ground water sources and nearby surface water sources may be required so as to provide sufficient information on water characteristics so that the Executive Secretary may classify existing ground water sources as required by R309-106-3(1)(c).

a. All community water systems shall monitor ground water sources for turbidity once every three years.

b. Non-transient non-community water systems are not required to monitor ground water sources for turbidity unless so ordered by the Executive Secretary.

c. Non-community water systems are not required to monitor ground water sources for turbidity unless so ordered by the Executive Secretary.

d. Samples may be taken from a representative location in the distribution system. However, the Executive Secretary may require that samples be collected from each individual source.

4.5.4 Procedures if Ground Water Source Turbidity Limit is Exceeded

If the result of an analysis of water from a ground water source or combination of ground water sources indicates that the turbidity limit of 5 NTUs is exceeded, the system shall collect three additional analyses at the same sampling point within one month. When the average of these four analyses (rounded to the same number of significant figures as the limit) exceeds the maximum turbidity limit, the system shall give public notice as required in R309-104-7.1.a. Where the raw water turbidity of developed spring or well water is in excess of 5 NTU, as measured by the average of the four samples, the spring or well is subject to re-classification by the Executive Secretary and it may be necessary that the raw water receive complete treatment as described in R309-108 of these rules or its equivalent as approved by the Executive Secretary. Monitoring after public notification shall be at a frequency and duration designated by the Executive Secretary.

4.6 Microbiological Quality

4.6.1 Routine Microbiological Monitoring Requirements Applicable to all public water systems (community, non-transient non-community and non-community).

a. Community water systems shall monitor for total coliforms at a frequency based on the population served, as follows:

TABLE 104-5
TOTAL COLIFORM MONITORING FREQUENCY
FOR PUBLIC WATER SYSTEMS

Population served			Minimum number of samples per month
25	to	1,000	1
1,001	to	2,500	2
2,501	to	3,300	3
3,301	to	4,100	4
4,101	to	4,900	5
4,901	to	5,800	6
5,801	to	6,700	7
6,701	to	7,600	8
7,601	to	8,500	9
8,501	to	12,900	10
12,901	to	17,200	15
17,201	to	21,500	20
21,501	to	25,000	25
25,001	to	33,000	30
33,001	to	41,000	40

41,001	to	50,000	50
50,001	to	59,000	60
59,001	to	70,000	70
70,001	to	83,000	80
83,001	to	96,000	90
96,001	to	130,000	100
130,001	to	220,000	120
220,001	to	320,000	150
320,001	to	450,000	180
450,001	to	600,000	210
600,001	to	780,000	240
780,001	to	970,000	270
970,001	to	1,230,000	300
1,230,001	to	1,520,000	330
1,520,001	to	1,850,000	360
1,850,001	to	2,270,000	390
2,270,001	to	3,020,000	420
3,020,001	to	3,960,000	450
3,960,001	or	more	480

The 25 - 1,000 population figure includes public water systems which have at least 15 service connections, but serve fewer than 25 persons.

b. Non-transient non-community water systems shall monitor for total coliforms as follows:

1. A system using only ground water (except ground water under the direct influence of surface water) and serving 1,000 or fewer shall monitor each calendar quarter that the system provides water to the public.

2. A system using only ground water (except ground water under the direct influence of surface water) and serving more than 1,000 persons during any month shall monitor at the same frequency as a like-sized community water system, as specified in Table 104-5. The Executive Secretary may reduce the monitoring frequency for any month the system serves 1,000 persons or fewer. In no case may the required monitoring be reduced to less than once per calendar quarter.

3. A system using surface water, in total or in part, shall monitor at the same frequency as a like-sized community water system, as specified in Table 104-5.

4. A system using ground water under the direct influence of surface water shall monitor at the same frequency as a like-sized community water system, as specified in Table 104-5. The system shall begin monitoring at this frequency beginning six months after the Executive Secretary determines that the ground water is under the direct influence of surface water.

c. Non-community water systems shall monitor for total coliforms as specified in R309-104-4.6.1.b.

d. The samples shall be collected at points which are representative of water throughout the distribution system according to a written sampling plan. This plan is subject to the approval of the Executive Secretary.

e. A public water system shall collect samples at regular time intervals throughout the month, except that a system which uses only ground water (except ground water under the direct influence of surface water) and serves 4,900 persons or fewer, may collect all required samples on a single day if they are taken from different sites.

f. A public water system that uses inadequately treated surface water or inadequately treated ground water under the direct influence of surface water shall collect and analyze for total coliforms at least one sample each day the turbidity level of the source water exceeds 1 NTU. This sample shall be collected near the first service connection from the source. The system shall collect the sample within 24 hours of the time when the turbidity level was first exceeded. The sample shall be analyzed within 30 hours of collection. Sample results from this coliform monitoring shall be included in determining total coliform compliance for that month. The State may extend the 24 hour limitation if the system has a logistical problem that is beyond the system's control. In the case of an extension the Executive Secretary shall specify how much time the system has to collect the sample.

4.6.2 Procedures if a Routine Sample is Total Coliform-Positive

a. Repeat sampling -

The water system shall collect a set of repeat samples within 24 hours of being notified of the total coliform-positive sample result. The number of repeat samples required to be taken is specified in Table 104-6. The State may extend the 24 hour limitation if the system has a logistical problem that is beyond its control. In the case of an extension the Executive Secretary shall specify how much time the system has to collect the repeat samples.

TABLE 104-6
REPEAT AND ADDITIONAL SAMPLE MONITORING FREQUENCY

Population Served by the system	# Routine Samples per month	# Repeats for each Total-Coliform Positive sample Within 24 hours	# Samples in ADDITION to the Routine samples the following month
25-1000/See Note 1 below	1	4	4
1000-2500	2	3	3
2501-3300	3	3	2
3301-4100	4	3	1
greater than 4100	5 or more	3	No additional samples required. Refer to Table 104-5 for # of Routine samples

NOTE 1: The population category 25 - 1000 includes all non-transient non-community and non-community water systems. Non-transient non-community and non-community systems are only are required to sample once per calendar quarter on a routine basis for those quarters the system is in operation.

Repeat and Additional Routine samples are only required if a Routine Sample is Total Coliform-Positive.

b. Repeat sampling locations -

The system shall collect the repeat samples from the following locations:

1. One from the original sample site;
2. One within 5 service connections upstream;
3. One within 5 service connections downstream;
4. If required, one from any site mentioned above.

If a total coliform-positive sample is at the end of the distribution system, or next to the end of the distribution system, the Executive Secretary may waive the requirement to collect at least one repeat sample upstream or downstream of the original sampling site.

c. The system shall collect all repeat samples on the same day, except that the Executive Secretary may allow a system with a single service connection to collect the required set of repeat samples on consecutive days.

d. Additional repeat samples - If one or more repeat samples in a set is total coliform-positive, the system shall

collect an additional set of repeat samples as specified in a., b. and c. of this subsection. The additional repeat samples shall be collected within 24 hours of being notified of the positive result, unless the Executive Secretary extends the time limit because of a logistical problem. The system shall repeat this process until either total coliforms are not detected in one complete set of repeat samples or the system determines that the total coliform MCL has been exceeded and notifies the state and begins the required public notification.

e. If a system collecting fewer than five routine samples per month has one or more total coliform-positive samples and the Executive Secretary does not invalidate the sample under R309-104-4.6.3, it shall collect at least five routine samples during the next month the system provides water to the public. Refer to Table 104-6 for the number of additional samples required.

1. The Executive Secretary may waive the requirement to collect five routine samples the next month the system provides water to the public if the Executive Secretary has determined why the sample was total coliform-positive and establishes that the system has corrected the problem or will correct the problem before the end of the next month the system serves water to the public. In this case:

(a) The Executive Secretary shall document this decision in writing; and

(b) The Executive Secretary or his representative shall sign the document; and

(c) The Executive Secretary will make the document available to the EPA and the public.

2. The Executive Secretary cannot waive the additional samples in the following month solely because all repeat samples are total coliform-negative.

3. If the additional samples in the following month are waived, a system shall still take the minimum number of routine samples required in Table 104-5 of R309-104-4.6.1 before the end of the next month and use it to determine compliance with the total coliform MCL.

f. Samples to be included in calculations - Results of all routine and repeat samples not invalidated in writing by the Executive Secretary shall be included in determining compliance with the total coliform MCL.

g. Samples not to be included in calculations - Special purpose and investigative samples, such as those taken to determine the efficiency of disinfection practices following such operations as pipe replacement or repair, may not be used to determine compliance with the MCL for total coliforms. These samples shall be identified as special purpose or investigative at the time of collection.

4.6.3 Response to violation

a. A public water system which has exceeded the MCL for total coliforms as specified in R309-103-2.6 shall report the violation to the Executive Secretary no later than the end of the next business day after it learns of the violation, and notify the public in accordance with R309-104-7.

b. A public water system which has failed to comply with a coliform monitoring requirement shall report the monitoring violation to the Executive Secretary within ten days after the system discovers the violation and notify the public in accordance with R309-104-7.

4.6.4 Invalidation of Total Coliform-Positive Samples

An invalidated total coliform-positive sample does not count towards meeting the minimum monitoring requirements of R309-104-4.6.1 and R309-104-4.6.2. A total coliform-positive sample may not be invalidated solely on the basis of all repeat samples being total coliform-negative.

a. The Executive Secretary may invalidate a total coliform-positive sample only if one of the following conditions are met:

1. The laboratory establishes that improper sample analysis caused the total coliform-positive result; or

2. On the basis of the results of repeat samples collected as required in R309-104-4.6.2, the total coliform-positive sample resulted from a non-distribution system plumbing problem on the basis that all repeat samples taken at the same tap as the original total coliform-positive are total coliform-positive, but all repeat samples within five service connections are total coliform-negative; or

3. Substantial grounds exist to establish that the total coliform-positive result is due to a circumstance or condition which does not reflect water quality in the distribution system. In this case:

(a) The Executive Secretary shall document this decision in writing; and

(b) The Executive Secretary or his representative shall sign the document; and

(c) The Executive Secretary will make the document available to the EPA and the public. The system shall still collect the required repeat samples as outlined in R309-104-4.6.2 in order to determine compliance with the MCL.

b. A laboratory shall invalidate a total coliform sample (unless total coliforms are detected) if the results are indeterminate because of possible interference. A system shall collect and have analyzed, another total coliform sample from the same location as the original sample within 24 hours of being notified of the indeterminate result. The system shall continue to resample within 24 hours of notification of indeterminate results and have the samples analyzed until a valid sample result is obtained. The 24-hour time limit may be waived by the Executive Secretary on a case-by-case basis if the system has logistical problems beyond its control. Interference for each type of analysis is listed below.

1. The sample produces a turbid culture in the absence of gas production when using an analytical method where gas formation is examined.

2. The sample produces a turbid culture in the absence of an acid reaction when using the Presence-Absence Coliform Test.

3. The sample exhibits confluent growth or produces colonies too numerous to count when using an analytical method using a membrane filter.

4.6.5 Fecal coliforms/Escherichia coli (E. coli) testing

a. If any routine sample, repeat sample or additional sample is total coliform-positive, the system shall have the total coliform-positive culture medium analyzed to determine if fecal coliforms are present. The system may test for E. coli in lieu of fecal coliforms.

b. Notification of State and public - If fecal coliforms or E. coli are confirmed present (as per R309-103-2.6.b), the system shall notify the Executive Secretary by the end of the day

when the system is notified of the test results. If the system is notified after the Division of Drinking Water has closed, the system shall notify the Executive Secretary before the close of the next business day and begin public notification using the mandatory health effects language R309-104-7) within 72 hours.

c. The Executive Secretary may allow a system to forego the analysis for fecal coliforms or E. coli, if the system assumes that the total coliform positive sample is fecal coliform-positive or E. coli-positive. The system must notify the Executive Secretary of this decision and begin the required public notification.

4.6.6 Best Available Technology

The Executive Secretary may require an appropriate treatment process using the best available technology (BAT) in order to bring the water into compliance with the maximum contaminant level for microbiological quality. The BAT will be determined by the Executive Secretary.

4.7 Treatment Plant Monitoring and Reporting

4.7.1 General

Beginning June 29, 1993, or when treatment facilities are installed, whichever is later, all public water systems which use a treatment technique to treat water obtained in whole or in part from surface water sources or ground water sources under the direct influence of surface water shall monitor the plant's operation as indicated below and report the results to the Division of Drinking Water. Individual plants will be evaluated in accordance with the criteria outlined in R309-104-4.7.6. Based on information submitted and/or plant inspections, the plant will receive credit for treatment techniques other than disinfection that remove pathogens, specifically Giardia lamblia and viruses. This credit (log removal) will reduce the required disinfectant "CT" value which the plant must maintain to assure compliance with R309-103-2.7a(1).

4.7.2 Chemicals Used in Treatment Technique

Treatment plant management shall report the following to the Division of Drinking Water within ten days after the end of each month that the system serves water to the public, except as otherwise noted:

a. For each day;

1. If the plant treats water from multiple sources, the sources being utilized and the ratio for each if blending occurs.

2. The total volume of water treated by the plant,

3. The turbidity of the raw water entering the plant,

4. The pH of the effluent water, measured at or near the monitoring point for disinfectant residual,

5. The temperature of the effluent water, measured at or near the monitoring point for disinfectant residual,

6. The type and amount of chemicals used in the treatment process (clearly indicating the weight and active percent of chemical if dry feeders are used, or the percent solution and volume fed if liquid feeders are used),

7. The high and low temperature and weather conditions (local forecast information may be used, but any precipitation in the watershed should be further described as light, moderate, heavy, or extremely heavy), and

8. The results of any "jar tests" conducted that day

b. For each filter, each day;

1. The rate of water applied to each (gpm/sq.ft.),

2. The head loss across each (feet of water or psi),

3. Length of backwash (if conducted; in minutes), and

4. Hours of operation since last backwashed.

c. Annually; certify in writing as required by R309-102-7 that when a product containing acrylamide and/or epichlorohydrin is used, the combination of the amount of residual monomer in the polymer and the dosage rate does not exceed the levels specified as follows:

1. Acrylamide: 0.05%, when dosed at 1 part per million, and

2. Epichlorohydrin: 0.01%, when dosed at 20 parts per million.

Certification may rely on manufacturers data.

4.7.3 Turbidity

Treatment plant management shall monitor for turbidity and report to the Division of Drinking Water in accordance with R309-104-4.5.1. For the purpose of individual plant evaluation and establishment of pathogen removal credit for the purpose of lowering the required "CT" value assigned a plant, plant management may do additional turbidity monitoring at other points to satisfy criteria in R309-104-4.7.6.

4.7.4 Residual Disinfectant

Treatment plant management shall continuously monitor disinfectant residuals and report the following to the Division of Drinking Water within ten days after the end of each month that the system serves water to the public, except as otherwise noted:

a. For each day, the lowest measurement of residual disinfectant concentration in mg/l in water entering the distribution system, except that if there is a failure in the continuous monitoring equipment, grab sampling every 4 hours may be conducted in lieu of continuous monitoring, but for no more than 5 working days following the failure of the equipment. Systems serving 3,300 or fewer persons may take grab samples in lieu of providing continuous monitoring on an ongoing basis at the frequencies listed in Table 104-7 below:

TABLE 104-7
RESIDUAL GRAB SAMPLE FREQUENCY

System size by population	Samples/day
Less than 500	1
501 to 1,000	2
1,001 to 2,500	3
2,501 to 3,300	4

Note: The day's samples cannot be taken at the same time. The sampling intervals are subject to Executive Secretary's review and approval.

b. The date and duration of each period when the residual disinfectant concentration in water entering the distribution system fell below 0.2 mg/l and when the Division of Drinking Water was notified of the occurrence. The system must notify the Division as soon as possible, but no later than by the end of the next business day. The system also must notify the Division by the end of the next business day whether or not the residual was restored to at least 0.2 mg/l within four hours.

c. The following information on the samples taken in the distribution system in conjunction with total coliform monitoring pursuant to R309-104-4.6:

1. Number of instances where the residual disinfectant concentration is measured;

2. Number of instances where the residual disinfectant concentration is not measured but heterotrophic bacteria plate

count (HPC) is measured;

3. Number of instances where the residual disinfectant concentration is measured but not detected and no HPC is measured;

4. Number of instances where no residual disinfectant concentration is detected and where HPC is greater than 500/ml;

5. Number of instances where the residual disinfectant concentration is not measured and HPC is greater than 500/ml;

6. For the current and previous month the system serves water to the public, the value of "V" in the following formula:

V equals the ratio of ((c+d+e)/(a+b)) x 100, where a = the value in paragraph 4.7.4c(1) of this section, b = the value in paragraph 4.7.4c(2) of this section, c = the value in paragraph 4.7.4c(3) of this section, d = the value in paragraph 4.7.4c(4) of this section, e = the value in paragraph 4.7.4c(5) of this section.

4.7.5 Waterborne Disease Outbreak

Each public water system, upon discovering that a waterborne disease outbreak as defined in R309-107-8 potentially attributable to their water system has occurred, must report that occurrence to the Division of Drinking Water as soon as possible, but no later than by the end of the next business day.

4.7.6 Criteria for Individual Treatment Plant Evaluation

New and existing water treatment plants must meet specified monitoring and performance criteria in order to ensure that filtration and disinfection are satisfactorily practiced. The monitoring requirements and performance criteria for turbidity and disinfection listed above provide the minimum for the Division of Drinking Water to evaluate the plant's efficiency in removing and/or inactivating 99.9 percent (3-log) of Giardia lamblia cysts and 99.99 percent (4-log) of viruses as required by R309-108-5(2)(a) and (b).

The Division, upon evaluation of individual raw water sources, surface water or ground water under the direct influence of surface water, may require greater than the 3-log, 4-log removal/inactivation of Giardia and viruses respectfully. If a raw water source exhibits an estimated concentration of 1 to 10 Giardia cysts per 100 liters, 4 and 5-log removal/inactivation may be required. If the raw water exhibits a concentration of 10 to 100 cysts per 100 liters, 5 and 6-log removal/inactivation may be required.

The Division, upon individual plant evaluation, may assign the treatment techniques (coagulation, flocculation, sedimentation and filtration) credit toward removal of Giardia cysts and viruses. The greater the number of barriers in the treatment process, the greater the reduction of pathogens, therefore lessor credit will be given to processes such as direct filtration which eliminate one or more conventional barriers. Plants may monitor turbidity at multiple points in the treatment process as evidence of the performance of an individual treatment technique. Studies are being conducted in an effort to correlate turbidity reduction to particulate removal, but results are not yet conclusive.

The nominal credit that will be assigned certain conventional processes are outlined in Table 104-8:

TABLE 104-8
CONVENTIONAL PROCESS CREDIT

Process	Log Reduction Credit Giardia	Viruses
Conventional Complete Treatment	2.5	2.0
Direct Filtration	2.0	1.0
Slow Sand Filtration	2.0	2.0
Diatomaceous Earth Filters	2.0	1.0

Upon evaluation of information provided by individual plants or obtained during inspections by Division staff, the Division may increase or decrease the nominal credit assigned individual plants based on that evaluation.

Items which would augment the treatment process and thereby warrant increased credit are:

1. Facilities or means to moderate extreme fluctuations in raw water characteristics.

2. Sufficient on-site laboratory facilities regularly used to alert operators to changes in raw water quality.

3. Use of pilot stream facilities which duplicate treatment conditions but allow operators to know results of adjustments much sooner than if only monitoring plant effluent.

4. Use of additional monitoring methods such as particle size and distribution analysis to achieve greater efficiency in particulate removal.

5. Regular program for preventive maintenance, records of such, and general good housekeeping.

6. Adequate staff of well trained and certified plant operators.

Items which would be considered a detriment to the treatment process and thereby warrant decreased credit are:

1. Inadequate staff of trained and certified operators.
2. Lack of regular maintenance and poor housekeeping.
3. Insufficient on-site laboratory facilities.

R309-104-5. Unregulated Contaminants.

5.1 Monitoring Requirements

5.1.1. Contaminants.

a. List 1:

1. Chloroform
2. Bromodichloromethane
3. Chlorodibromomethane
4. Bromoform
5. Chlorobenzene
6. m-Dichlorobenzene
7. 1,1-Dichloropropene
8. 1,1-Dichloroethane
9. 1,1,2,2-Tetrachloroethane
10. 1,3-Dichloropropane
11. Chloromethane
12. Bromomethane
13. 1,2,3-Trichloropropane
14. 1,1,1,2-Tetrachloroethane
15. Chloroethane
16. 2,2-Dichloropropane
17. o-Chlorotoluene
18. p-Chlorotoluene
19. Bromobenzene
20. 1,3-Dichloropropene

b. List 2:

1. Aldrin
2. Butachlor
3. Carbaryl

4. Dicamba
5. Dieldrin
6. 3-Hydroxycarbofuran
7. Methomyl
8. Metolachlor
9. Metribuzin
10. Propachlor

5.1.2. Monitoring of the contaminants listed in R309-104-5.1.1. shall be conducted as follows:

a. Each community and non-transient, non-community water system shall take four consecutive quarterly samples at each sampling point for each contaminant listed in R309-104-5.1.1. and report the results to the Executive Secretary. Monitoring must be completed by December 31, 1995. For systems serving a population of less than 3,300, this requirement may be reduced to one sample if the sample is taken prior to October 1, 1993.

b. Each community and non-transient non-community water system may apply to the Executive Secretary for a waiver from the requirements of R309-104-5.1.2.a.

c. The Executive Secretary may grant a use waiver or a susceptability waiver for the requirement of R309-104-5.1.2. in accordance with R309-113-5. If a waiver is granted, no monitoring for unregulated contaminants shall be required.

d. Groundwater systems shall take a minimum of one sample at every entry point to the distribution system which is representative of each well after treatment (hereafter called a sampling point). Each sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

e. Surface water systems shall take a minimum of one sample at points in the distribution system that are representative of each source or at each entry point to the distribution system after treatment (hereafter called a sampling point). Each sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant. (For purposes of this paragraph, surface water systems include systems with a combination of surface and ground sources.)

f. If the system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water representative of all sources is being used).

g. The Executive Secretary may require a confirmation sample for positive or negative results.

h. Instead of performing the monitoring required by this section, a community water system or non-transient non-community water system serving fewer than 150 service connections may send a letter to the Executive Secretary stating that the system is available for sampling. This letter must be sent to the Executive Secretary by January 1, 1994. The system shall not send such samples to the Executive Secretary, unless requested to do so by the Executive Secretary.

5.2 Other contaminants

Viruses, protozoans, and other chemical and biological substances which may be present in waters exposed to the environment are presently impractical to monitor on a routine basis. Monitoring programs are not now required.

5.3 Treatment

Surface water sources or ground water sources contaminated by surface sources shall be subjected to complete treatment as described in R309-108, or by its equivalent as approved by the Executive Secretary.

R309-104-6. Reporting Test Results.

If analyses are made by certified laboratories other than the state laboratory, these results must be forwarded to the Executive Secretary as follows:

1. The supplier shall report to the Division of Drinking Water the analysis of water samples which fail to comply with the Primary Drinking Water Standards of R309-103. Except where a different reporting period is specified in R309-104, this report shall be submitted within 48 hours after the supplier receives the report from his lab. The Division of Drinking Water may be reached at (801)538-6159.

2. Monthly summaries of bacteriologic results must be submitted within ten days following the end of each month.

3. All results of TTHM samples shall be reported to the Executive Secretary within 10 days of receipt of analysis.

4. For all samples other than samples showing unacceptable results, bacteriologic samples or TTHM samples, the time between the receipt of the analysis and the reporting of the results to the Executive Secretary shall not exceed 40 days.

R309-104-7. Public Notification.

7.1 Public Notification Requirements

Applicable to all public water systems; Community, Non-transient non-community and Non-community (Refer to R309-104-7.2 for specific requirements for Community, Non-Transient non-community and Non-community water systems).

a. Maximum contaminant level (MCL), treatment technique, waterborne disease outbreak, and variance and exemption schedule violations -

If a public water system fails to comply with an applicable maximum contaminant level (MCL) or treatment technique, or fails to comply with the requirements of any schedule prescribed pursuant to a variance or exemption, the owner or operator of the public water system shall notify persons served by the system as provided in this subsection R309-104-7.1.a.

1. Notification via written notice by mail - Notice of the failure or violation shall be by inclusion of a notice in the first set of water bills of the system issued after the failure or violation and in any event by written notice within forty-five days after the violation or failure. If the system issues water bills less frequently than quarterly, or does not issue water bills, the notice shall be made by or supplemented by another form of mail delivery (direct mail or hand delivery). Such notice shall be repeated at least once every three months so long as the violation or failure exists. The Executive Secretary may waive mail or hand delivery when the Executive Secretary determines that the owner or operator of the public water system in violation has corrected the violation or failure within the forty-five day period. The waiver shall be in writing and within the forty-five day period; and

2. Notification via newspaper -

Notice shall be given by publication in a daily newspaper or newspapers of general circulation in the area served by the

system. Such notice shall be completed as soon as possible, but in no case later than fourteen days after the violation or failure.

If the area served by a public water system is not served by a daily newspaper of general circulation, notification by newspaper shall instead be given by publication in a weekly newspaper of general circulation serving the area.

If no weekly or daily newspaper of general circulation serves the area, the system shall comply with the requirements of R309-104-7.2; and

3. For violations of the maximum contaminant levels (MCLs) that pose an acute risk to public health, by furnishing a copy of the notice to the radio and television stations serving the area served by the system. Such notice shall be furnished as soon as possible but in no case later than 72 hours after the violation or failure. Acute violations include but are not limited to microbiological contaminants with fecal coliform present, occurrence of a waterborne disease outbreak, as defined in R309-104-9, nitrates or nitrite.

b. Other violations, variances, exemptions - If a public water system fails to perform any monitoring or fails to comply with an applicable testing procedure, or is granted a variance or an exemption as provided in R309-104 of these rules, the owner or operator of the public water system shall notify persons served by the system as provided in this subsection R309-104-7.1.b.

1. Notification via written notice by mail - Notice of the violation or granting of a variance or exemption shall be by inclusion of a notice in the first set of water bills of the system issued after the violation or granting of a variance or exemption and in any event by written notice within three months after the violation or granting of a variance or exemption. If the system issues water bills less frequently than quarterly, or does not issue water bills, the notice shall be made by or supplemented by another form of mail delivery (direct mail or hand delivery). Such notice shall be repeated at least once every three months so long as the system's violation continues or the variance or exemption remains in effect; and

2. Notification via newspaper -

Notice shall be given by publication in a daily newspaper or newspapers of general circulation in the area served by the system. Such notice shall be completed within three months after the violation or granting of a variance or exemption.

If the area served by a public water system is not served by a daily newspaper of general circulation, notification by newspaper shall instead be given by publication in a weekly newspaper of general circulation serving the area.

If no weekly or daily newspaper of general circulation serves the area, the system shall comply with the requirements of R309-104-7.2.

7.2 Specific Public Notification Requirements for Community, Non-transient non-community and Non-Community water systems

a. Community water system requirements

1. Miscellaneous notification methods for MCL, treatment techniques and variance and exemption schedule violations - If no weekly or daily newspaper of general circulation serves the area, the owner or operator of the community water system shall give notice within 14 days after the violation or failure by hand delivery or by posting in conspicuous places within the area served by the system. In the case of an acute violation as defined in R309-104-7.1.a.3 hand delivery or posting shall begin as soon as possible but no later than 72 hours after the violation or failure. Posting shall continue for as long as the violation exists. Notice by hand delivery shall be repeated every three months for as long as the violation or failure exists.

2. Miscellaneous notification methods for monitoring violations, failure to comply with testing procedures and issuances of an exemption or variance - If no weekly or daily newspaper of general circulation serves the area, the owner or operator of the community water system shall give notice within three months after the violation or granting of a variance or exemption by hand delivery or by posting the notice in post offices within the area for as long as the violation exists or a variance or exemption remains in effect. Notice by hand delivery shall be repeated at least every three months for as long as the violation or a variance or exemption remains in effect.

3. Notice to new billing units - The owner or operator of a community water system shall give a copy of the most recent public notice for any outstanding violation of any maximum contaminant level, or any treatment technique requirement, or any variance or exemption schedule to all new billing units or new hookups prior to or at the time service begins.

4. Community water systems that exceed the secondary maximum contaminant level for fluoride shall send the notice described in R309-104-7.3.b.1. to:

(a) all billing units annually;

(b) all new billing units at the time of service; and

(c) the Executive Secretary.

b. Non-transient non-community and Non-community water system requirements

1. Miscellaneous notification methods for MCL, treatment techniques and variance and exemption schedule violations - If no weekly or daily newspaper of general circulation serves the area, the owner or operator of the non-transient non-community or non-community water system may give notice within 14 days after the violation or failure by hand delivery or by posting in conspicuous places within the area served by the system. In the case of an acute violation as defined in R309-104-7.1.a.3 hand delivery or posting shall begin as soon as possible but no later than 72 hours after the violation or failure. Posting shall continue for as long as the violation exists. Notice by hand delivery shall be repeated every three months for as long as the violation or failure exists.

2. Miscellaneous notification methods for monitoring violations, failure to comply with testing procedures and issuances of an exemption or variance - If no weekly or daily newspaper of general circulation serves the area, the owner or operator of the non-transient non-community or non-community water system may give notice within three months after the violation or granting of a variance or exemption by hand delivery or by posting the notice in post offices within the area for as long as the violation exists or a variance or exemption remains in effect. Notice by hand delivery shall be repeated at least every three months for as long as the violation or a variance or exemption remains in effect.

7.3 Method of Writing Notice

Applicable to all public water systems; Community, Non-transient non-community and Non-community.

Notices given pursuant to this section shall be written in a manner reasonably designed to fully inform the users of the system. The notice shall be conspicuous and shall not use unduly technical language, unduly small print or other methods which would frustrate the purpose of the notice. The notice shall disclose all material facts regarding the subject including the nature of the problem; when appropriate, a clear statement that a primary drinking water regulation has been violated; any potential adverse health effects; the steps that the public water system is taking to correct the violation; the necessity for seeking alternative water supplies, if any, and any preventative measures that should be taken by the public and the telephone number for the water system where the consumer may obtain additional information. Where appropriate, or where designated by the Executive Secretary, bilingual notice shall be given.

Mandatory Health Effects Language. When providing the information on potential adverse health effects required by this section in notices of violations of maximum contaminant levels or treatment technique requirements, notice of the granting or the continued existence of exemptions or variances, or notices of failure to comply with a variance or exemption schedule, the owner or operator of a public water system shall include the language specified below for each contaminant. If language for a particular contaminant is not specified below at the time notice is required, this paragraph does not apply.

a. Microbiological Contaminants

1. Total coliforms: (To be used when there is a violation of R309-103-2.6.a only)

The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that the presence of total coliforms is a possible health concern. Total coliforms are common in the environment and are generally not harmful themselves. The presence of these bacteria in drinking water, however, generally is a result of a problem with water treatment or the pipes which distribute the water, and indicates that the water may be contaminated with organisms that can cause disease. Disease symptoms may include diarrhea, cramps, nausea, and possibly jaundice, and any associated headaches and fatigue. These symptoms, however, are not just associated with disease-causing organisms in drinking water, but also may be caused by a number of factors other than your drinking water. EPA has set an enforceable drinking water standard for total coliforms to reduce the risk of these adverse health effects. Under this standard, no more than 5.0 percent of the samples collected during a month can contain these bacteria, except that systems collecting fewer than 40 samples/month that have one total coliform-positive sample per month are not violating the standard. Drinking water which meets this standard is usually not associated with a health risk from disease-causing bacteria and should be considered safe.

2. Fecal Coliforms/E. coli: (To be used when there is a violation of R309-103-2.6.b)

The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that the presence of fecal coliforms or E. coli is a serious health concern. Fecal coliforms and E. coli are generally not harmful themselves, but their presence in drinking water is serious because they usually are associated with sewage or animal wastes. The presence of these bacteria in drinking water is generally a result of a problem with water treatment or the pipes which distribute the water, and indicates that the water may be contaminated with organisms that can cause disease. Disease symptoms may include diarrhea, cramps, nausea, and possibly jaundice, and associated headaches and fatigue. These symptoms, however, are not just associated with disease-causing organisms in drinking water, but also may be caused by a number of factors other than your drinking water. EPA has set an enforceable drinking water standard for fecal coliforms and E. coli to reduce the risk of these adverse health effects. Under this standard all drinking water samples must be free of these bacteria. Drinking water which meets this standard is associated with little or none of this risk and should be considered safe. State and local health authorities recommend that consumers take the following precautions: (To be inserted by the public water system, according to instructions from State or local authorities.)

3. Microbiological Contaminants: (To be used when there is a violation of the treatment technique requirements for filtration and disinfection)

The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that the presence of microbiological contaminants are a health concern at certain levels of exposure. If water is inadequately treated, microbiological contaminants in that water may cause disease. Disease symptoms may include diarrhea, cramps, nausea, and possibly jaundice, and any associated headaches and fatigue. These symptoms, however, are not just associated with disease-causing organisms in drinking water, but also may be caused by a number of factors other than your drinking water. EPA has set an enforceable requirements for treating drinking water to reduce the risk of these adverse health effects. Treatment such as filtering and disinfecting the water removes or destroys microbiological contaminants. Drinking water which is treated to meet EPA requirements is associated with little to none of this risk and should be considered safe.

b. Inorganic Contaminants

1. Antimony. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that antimony is a health concern at certain levels of exposure. This inorganic chemical occurs naturally in soils, ground water and surface waters and is often used in the flame retardant industry. It is also used in ceramics, glass, batteries, fireworks and explosives. It may get into drinking water through natural weathering of rock, industrial production, municipal waste disposal or manufacturing processes. This chemical has been shown to decrease longevity, and altered blood levels of cholesterol and glucose in laboratory animals such as rats exposed to high levels during their lifetimes. EPA has set the drinking water standard for antimony at 0.006 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to antimony.

2. Asbestos. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that asbestos fibers greater than 10 micrometers in length are a health concern at certain levels of exposure. Asbestos is a naturally occurring mineral. Most asbestos fibers in drinking

water are less than 10 micrometers in length and occur in drinking water from natural sources and from corroded asbestos-cement pipes in the distribution system. The major uses of asbestos were in the production of cements, floor tiles, paper products, paint, and caulking; in transportation-related applications; and in the production of textiles and plastics. Asbestos was once a popular insulating and fire retardant material. Inhalation studies have shown that various forms of asbestos have produced lung tumors in laboratory animals. The available information on the risk of developing gastrointestinal tract cancer associated with the ingestion of asbestos from drinking water is limited. Ingestion of intermediate-range chrysotile asbestos fibers greater than 10 micrometers in length is associated with causing benign tumors in male rats. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for asbestos at 7 million long fibers per liter to reduce the potential risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to asbestos.

3. Barium. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that barium is a health concern at certain levels of exposure. This inorganic chemical occurs naturally in some aquifers that serve as sources of ground water. It is also used in oil and gas drilling muds, automotive paints, bricks, tiles and jet fuels. It generally gets into drinking water after dissolving from naturally occurring minerals in the ground. This chemical may damage the heart and cardiovascular system, and is associated with high blood pressure in laboratory animals such as rats exposed to high levels during their lifetimes. In humans, EPA believes that effects from barium on blood pressure should not occur below 2 parts per million (ppm) in drinking water. EPA has set the drinking water standard for barium at 2 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to barium.

4. Beryllium. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that beryllium is a health concern at certain levels of exposure. This inorganic metal occurs naturally in soils, ground water and surface waters and is often used in electrical equipment and electrical components. It generally gets into water from runoff from mining operations, discharge from processing plants and improper waste disposal. Beryllium compounds have been associated with damage to the bones and lungs and induction of cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. There is limited evidence to suggest that beryllium may pose a cancer risk via drinking water exposure. Therefore, EPA based the health assessment on noncancer effects with an extra uncertainty factor to account for possible carcinogenicity. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for beryllium at 0.004 part per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to beryllium.

5. Cadmium. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that cadmium is a health concern at certain levels of exposure. Food and the smoking of tobacco are common sources of general exposure. This inorganic metal is a contaminant in the metals used to galvanize pipe. It generally gets into water by corrosion of galvanized pipes or by improper waste disposal. This chemical has been shown to damage the kidney in animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Some industrial workers who were exposed to relatively large amounts of this chemical during working careers also suffered damage to the kidney. EPA has set the drinking water standard for cadmium at 0.005 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to cadmium.

6. Chromium. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that chromium is a health concern at certain levels of exposure. This inorganic metal occurs naturally in the ground and is often used in the electroplating of metals. It generally gets into water from runoff from old mining operations and improper waste disposal from plating operations. This chemical has been shown to damage the kidney, nervous system, and the circulatory system of laboratory animals such as rats and mice when the animals are exposed at high levels. Some humans who were exposed to high levels of this chemical suffered liver and kidney damage, dermatitis and respiratory problems. EPA has set the drinking water standard for chromium at 0.1 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to chromium.

7. Copper. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that copper is a health concern at certain exposure levels. Copper, a reddish-brown metal, is often used to plumb residential and commercial structures that are connected to water distribution systems. Copper contaminating drinking water as a corrosion by-product occurs as the result of the corrosion of copper pipes that remain in contact with water for a prolonged period of time. Copper is an essential nutrient, but at high doses it has been shown to cause stomach and intestinal distress, liver and kidney damage, and anemia. Persons with Wilson's disease may be at a higher risk of health effects due to copper than the general public. EPA's national primary drinking water regulation requires all public water systems to install optimal corrosion control to minimize copper contamination resulting from the corrosion of plumbing materials. Public water systems serving 50,000 people or fewer that have copper concentrations below 1.3 parts per million (ppm) in more than 90% of tap water samples (the EPA "action level") are not required to install or improve their treatment. Any water system that exceeds the action level must also monitor their source water to determine whether treatment to remove copper in

source water is needed.

8. Cyanide. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that cyanide is a health concern at certain levels of exposure. This inorganic chemical is used in electroplating, steel processing, plastics, synthetic fabrics and fertilizer products. It usually gets into water as a result of improper waste disposal. This chemical has been shown to damage the spleen, brain and liver of humans fatally poisoned with cyanide. EPA has set the drinking water standard for cyanide at 0.2 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to cyanide.

9. Fluoride. The United States Environmental Protection Agency requires that we send you this notice on the level of fluoride in your drinking water. The drinking water in your community has a fluoride concentration of (PWS shall insert the compliance result which triggered notification under this Part.) milligrams per liter (mg/l).

Federal Regulations require that fluoride, which occurs naturally in your water supply, not exceed a concentration of 4.0 mg/l in drinking water. This is an enforceable standard called a Maximum Contaminant Level (MCL), and it has been established to protect the public health. Exposure to drinking water levels above 4.0 mg/l for many years may result in some cases of crippling skeletal fluorosis, which is a serious bone disorder. Federal law also requires that we notify you when monitoring indicates that the fluoride in your drinking water exceeds 2.0 mg/l. This is intended to alert families about dental problems that might affect children under nine years of age. The fluoride concentration of your water exceeds this federal guideline.

Fluoride in children's drinking water at levels of approximately 1 mg/l reduces the number of dental cavities. However, some children exposed to levels of fluoride greater than about 2.0 mg/l may develop dental fluorosis. Dental fluorosis, in its moderate and severe forms, is a brown staining and/or pitting of the permanent teeth.

Because dental fluorosis occurs only when developing teeth (before they erupt from the gums) are exposed to elevated fluoride levels, households without children are not expected to be affected by this level of fluoride. Families with children under the age of nine are encouraged to seek other sources of drinking water for their children to avoid the possibility of staining and pitting.

Your water supplier can lower the concentration of fluoride in your water so that you will still receive the benefits of cavity prevention while the possibility of stained and pitted teeth is minimized. Removal of fluoride may increase your water costs. Treatment systems are also commercially available for home use. Low fluoride bottled drinking water that would meet all standards is also commercially available.

For further information contact your water system (PWS shall insert the name, address and telephone number of a contact person of PWS).

10. Lead. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that lead is a health concern at certain exposure levels. Materials that contain lead have frequently been used in the construction of water supply distribution systems, and plumbing systems in private homes and other buildings. The most commonly found materials include service lines, pipes, brass and bronze fixtures, and solders and fluxes. Lead in these materials can contaminate drinking water as a result of the corrosion that takes place when water comes into contact with those materials. Lead can cause a variety of adverse health effects in humans. At relatively low levels of exposure, these effects may include interference with red blood cell chemistry, delays in normal physical and mental development in babies and young children, slight deficits in the attention span, hearing, and learning abilities of children, and slight increases in the blood pressure of some adults. EPA's national primary drinking water regulation requires all public water systems to optimize corrosion control to minimize lead contamination resulting from the corrosion of plumbing materials. Public water systems serving 50,000 people or fewer that have lead concentrations below 15 parts per billion (ppb) in more than 90% of tap water samples (the EPA "action level") have optimized their corrosion control treatment. Any water system that exceeds the action level must also monitor their source water to determine whether treatment to remove lead in source water is needed. Any water system that continues to exceed the action level after installation of corrosion control and/or source water treatment must eventually replace all lead service lines contributing in excess of 15 ppb of lead to drinking water. Any water system that exceeds the action level must also undertake a public education program to inform consumers of ways they can reduce their exposure to potentially high levels of lead in drinking water.

11. Mercury. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that mercury is a health concern at certain levels of exposure. This inorganic metal is used in electrical equipment and some water pumps. It usually gets into water as a result of improper waste disposal. This chemical has been shown to damage the kidney of laboratory animals such as rats when the animals are exposed at high levels over their lifetimes. EPA has set the drinking water standard for mercury at 0.002 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to mercury.

12. Nickel. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that nickel poses a health concern at certain levels of exposure. This inorganic metal occurs naturally in soils, ground water and surface waters and is often used in electroplating, stainless steel and alloy products. It generally gets into water from mining and refining operations. This chemical has been shown to damage the heart and liver in laboratory animals when the animals are exposed to high levels over their lifetimes. EPA has set the drinking water standard at 0.1 parts per million (ppm) for nickel to protect against the risk of these adverse effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to nickel.

13. Nitrate. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined

that nitrate poses an acute health concern at certain levels of exposure. Nitrate is used in fertilizer and is found in sewage and wastes from human and/or farm animals and generally gets into drinking water from those activities. Excessive levels of nitrate in drinking water have caused serious illness and sometimes death in infants under six months of age. The serious illness in infants is caused because nitrate is converted to nitrite in the body. Nitrite interferes with the oxygen carrying capacity of the child's blood. This is an acute disease in that symptoms can develop rapidly in infants. In most cases, health deteriorates over a period of days. Symptoms include shortness of breath and blueness of the skin. Clearly, expert medical advice should be sought immediately if these symptoms occur. The purpose of this notice is to encourage parents and other responsible parties to provide infants with an alternate source of drinking water. Local and State health authorities are the best source for information concerning alternate sources of drinking water for infants. EPA has set the drinking water standard at 10 parts per million (ppm) for nitrate to protect against the risk of these adverse effects. EPA has also set a drinking water standard for nitrite at 1 ppm. To allow for the fact that the toxicity of nitrate and nitrite are additive, EPA has also established a standard for the sum of nitrate and nitrite at 10 ppm. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to nitrate.

14. Nitrite. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that nitrite poses an acute health concern at certain levels of exposure. This inorganic chemical is used in fertilizers and is found in sewage and wastes from humans and/or farm animals and generally gets into drinking water as a result of those activities. While excessive levels of nitrite in drinking water have not been observed, other sources of nitrite have caused serious illness and sometimes death in infants under six months of age. The serious illness in infants is caused because nitrite interferes with the oxygen carrying capacity of the child's blood. This is an acute disease in that symptoms can develop rapidly. However, in most cases, health deteriorates over a period of days. Symptoms include shortness of breath and blueness of the skin. Clearly, expert medical advice should be sought immediately if these symptoms occur. The purpose of this notice is to encourage parents and other responsible parties to provide infants with an alternate source of drinking water. Local and State health authorities are the best source for information concerning alternate sources of drinking water for infants. EPA has set the drinking water standard at 1 part per million (ppm) for nitrite to protect against the risk of these adverse effects. EPA has also set a drinking water standard for nitrate (converted to nitrite in humans) at 10 ppm and for the sum of nitrate and nitrite at 10 ppm. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to nitrite.

15. Selenium. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that selenium is a health concern at certain high levels of exposure. Selenium is also an essential nutrient at low levels of exposure. This inorganic chemical is found naturally in food and soils and is used in electronics, photocopy operations, the manufacture of glass, chemicals, drugs, and as a fungicide and a feed additive. In humans, exposure to high levels of selenium over a long period of time has resulted in a number of adverse health effects, including a loss of feeling and control in the arms and legs. EPA has set the drinking water standard for selenium at 0.05 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to selenium.

16. Thallium. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that thallium is a health concern at certain high levels of exposure. This inorganic metal is found naturally in soils and is used in electronics, pharmaceuticals, and the manufacture of glass and alloys. This chemical has been shown to damage the kidney, liver, brain and intestines of laboratory animals when the animals are exposed at high levels over their lifetimes. EPA has set the drinking water standard for thallium at 0.002 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to thallium.

c. Organic Contaminants. This section includes mandatory health effects language for Pesticides/PCBs/SOCs, Volatile Organic Contaminants and Treatment Chemicals.

1. Acrylamide. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that acrylamide is a health concern at certain levels of exposure. Polymers made from acrylamide are sometimes used to treat water supplies to remove particulate contaminants. Acrylamide has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. Sufficiently large doses of acrylamide are known to cause neurological injury. EPA has set the drinking water standard for acrylamide using a treatment technique to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. This treatment technique limits the amount of acrylamide in the polymer and the amount of the polymer which may be added to drinking water to remove particulates. Drinking water systems which comply with this treatment technique have little to no risk and are considered safe with respect to acrylamide.

2. Alachlor. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that alachlor is a health concern at certain levels of exposure. This organic chemical is a widely used pesticide. When soil and climatic conditions are favorable, alachlor may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for alachlor at 0.002 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets this standard is associated with little

to none of this risk and is considered safe with respect to alachlor.

3. Aldicarb. The United State Environmental Protection Agency (EPA) sets drinking water standards and has determined that aldicarb is a health concern at certain levels of exposure. Aldicarb is a widely used pesticide. Under certain soil and climatic conditions (e.g. sandy soil and high rainfall), aldicarb may leach into ground water after normal agricultural applications to crops such as potatoes or peanuts or may enter drinking water supplies as a result of surface runoff. This chemical has been shown to damage the nervous system in laboratory animals such as rats and dogs exposed to high levels. EPA has set the drinking water standard for aldicarb at 0.003 parts per million (ppm) to protect against the risk of adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to aldicarb.

4. Aldicarb sulfoxide. The United State Environmental Protection Agency (EPA) sets drinking water standards and has determined that aldicarb sulfoxide is a health concern at certain levels of exposure. Aldicarb is a widely used pesticide. Aldicarb sulfoxide in ground water is primarily a breakdown product of aldicarb. Under certain soil and climatic conditions (e.g. sandy soil and high rainfall), aldicarb sulfoxide may leach into ground water after normal agricultural applications to crops such as potatoes or peanuts or may enter drinking water supplies as a result of surface runoff. This chemical has been shown to damage the nervous system in laboratory animals such as rats and dogs exposed to high levels. EPA has set the drinking water standard for aldicarb sulfoxide at 0.004 parts per million (ppm) to protect against the risk of adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to aldicarb sulfoxide.

5. Aldicarb sulfone. The United State Environmental Protection Agency (EPA) sets drinking water standards and has determined that aldicarb sulfone is a health concern at certain levels of exposure. Aldicarb is a widely used pesticide. Aldicarb sulfone is formed from the breakdown of aldicarb and is considered for registration as a pesticide under the name of aldoxycarb. Under certain soil and climatic conditions (e.g. sandy soil and high rainfall), aldicarb sulfone may leach into ground water after normal agricultural applications to crops such as potatoes or peanuts or may enter drinking water supplies as a result of surface runoff. This chemical has been shown to damage the nervous system in laboratory animals such as rats and dogs exposed to high levels. EPA has set the drinking water standard for aldicarb sulfone at 0.002 parts per million (ppm) to protect against the risk of adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to aldicarb sulfone.

6. Atrazine. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that atrazine is a health concern at certain levels of exposure. This organic chemical is a herbicide. When soil and climatic conditions are favorable, atrazine may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to affect offspring of rats and the heart of dogs. EPA has set the drinking water standard for atrazine at 0.003 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to atrazine.

7. Benzene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that benzene is a health concern at certain levels of exposure. This chemical is used as a solvent and degreaser of metals. It is also a major component of gasoline. Drinking water contamination generally results from leaking underground gasoline and petroleum tanks or improper waste disposal. This chemical has been associated with significantly increased risks of leukemia among certain industrial workers who were exposed to relatively large amounts of this chemical during their working careers. This chemical has also been shown to cause cancer in laboratory animals when the animals are exposed at high levels over their lifetimes. Chemicals that cause increased risk of cancer among exposed industrial workers and in laboratory animals also may increase the risk of cancer in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for benzene at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in humans and laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

8. Benzo(a)pyrene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that benzo(a)pyrene is a health concern at certain levels of exposure. Cigarette smoke and charbroiled meats are common sources of general exposure. The major source of benzo(a)pyrene in drinking water is the leaching from coal tar lining and sealants in water storage tanks. This chemical has been shown to cause cancer in animals such as rats and mice when the animals are exposed at high levels. EPA has set the drinking water standard for benzo(a)pyrene at 0.0002 parts per million (ppm) to protect against the risk of cancer. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to benzo(a)pyrene.

9. Carbofuran. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that carbofuran is a health concern at certain levels of exposure. This organic chemical is a pesticide. When soil and climatic conditions are favorable, carbofuran may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to damage the nervous and reproductive systems of laboratory animals such as rats and mice exposed at high levels over their lifetimes. Some humans who were exposed to relatively large amounts of this chemical during their working careers also suffered damage to the nervous system. Effects on the nervous system are generally rapidly reversible. EPA has set the drinking water standard for carbofuran at 0.04 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to carbofuran.

10. Carbon tetrachloride. The United States Environmental Protection Agency (EPA) sets drinking water

standards and has determined that carbon tetrachloride is a health concern at certain levels of exposure. This chemical was once a popular household cleaning fluid. It generally gets into drinking water by improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals may also increase the risk of cancer in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for carbon tetrachloride at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

11. Chlordane. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that chlordane is a health concern at certain levels of exposure. This organic chemical is a pesticide used to control termites. Chlordane is not very mobile in soils. It usually gets into drinking water after application near water supply intakes or wells. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for chlordane at 0.002 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to chlordane.

12. Dalapon. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that dalapon is a health concern at certain levels of exposure. This organic chemical is a widely used herbicide. It may get into drinking water after application to control grasses in crops, drainage ditches and along railroads. This chemical has been shown to cause damage to the kidney and liver in laboratory animals when the animals are exposed to high levels over their lifetimes. EPA has set the drinking water standard for dalapon at 0.2 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to dalapon.

13. Dibromochloropropane (DBCP). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that DBCP is a health concern at certain levels of exposure. This organic chemical was once a popular pesticide. When soil and climatic conditions are favorable, dibromochloropropane may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for DBCP at 0.0002 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to DBCP.

14. o-Dichlorobenzene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that o-dichlorobenzene is a health concern at certain levels of exposure. This organic chemical is used as a solvent in the production of pesticides and dyes. It generally gets into water by improper waste disposal. This chemical has been shown to damage the liver, kidney and the blood cells of laboratory animals such as rats and mice exposed to high levels during their lifetimes. Some industrial workers who were exposed to relatively large amounts of this chemical during working careers also suffered damage to the liver, nervous system, and circulatory system. EPA has set the drinking water standard for o-dichlorobenzene at 0.6 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to o-dichlorobenzene.

15. Para-dichlorobenzene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that para-dichlorobenzene is a health concern at certain levels of exposure. This chemical is a component of deodorizers, mothballs, and pesticides. It generally gets into drinking water by improper waste disposal. This chemical has been shown to cause liver and kidney damage in laboratory animals such as rats and mice when the animals are exposed to high levels over their lifetimes. Chemicals which cause adverse effects in laboratory animals also may cause adverse health effects in humans when exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for para-dichlorobenzene at 0.075 parts per million (ppm) to reduce the risk of these adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

16. 1,1-Dichloroethylene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that 1,1-dichloroethylene is a health concern at certain levels of exposure. This chemical is used in industry and is found in drinking water as a result of the breakdown of related solvents. The solvents are used as cleaners and degreasers of metals and generally get into drinking water by improper waste disposal. This chemical has been shown to cause liver and kidney damage in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals which cause adverse effects in laboratory animals also may cause adverse health effects in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for 1,1-dichloroethylene at 0.007 parts per million (ppm) to reduce the risk of these adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

17. cis-1,2-Dichloroethylene. The United States Environmental Protection Agency (EPA) establishes drinking

water standards and has determined that cis-1,2-dichloroethylene is a health concern at certain levels of exposure. This organic chemical is used as a solvent and intermediate in chemical production. It generally gets into water by improper waste disposal. This chemical has been shown to damage the liver, nervous system, and circulatory system of laboratory animals such as rats and mice when exposed at high levels over their lifetimes. Some humans who were exposed to relatively large amounts of this chemical also suffered damage to the nervous system. EPA has set the drinking water standard for cis-1,2-dichloroethylene at 0.07 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to cis-1,2-dichloroethylene.

18. trans-1,2-Dichloroethylene. The United States Environmental Protection Agency (EPA) establishes drinking water standards and has determined that trans-1,2-dichloroethylene is a health concern at certain levels of exposure. This organic chemical is used as a solvent and intermediate in chemical production. It generally gets into water by improper waste disposal. This chemical has been shown to damage the liver, nervous system, and the circulatory system of laboratory animals such as rats and mice when exposed at high levels over their lifetimes. Some humans who were exposed to relatively large amounts of this chemical also suffered damage to the nervous system. EPA has set the drinking water standard for trans-1,2-dichloroethylene at 0.1 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to trans-1,2-dichloroethylene.

19. 1,2-Dichloroethane. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that 1,2-dichloroethane is a health concern at certain levels of exposure. This chemical is used as a cleaning fluid for fats, oils, waxes, and resins. It generally gets into drinking water from improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for 1,2-dichloroethane at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

20. Dichloromethane. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that dichloromethane (methylene chloride) is a health concern at certain levels of exposure. This organic chemical is a widely used solvent. It is used in the manufacture of paint remover, as a metal degreaser and as an aerosol propellant. It generally gets into drinking water after improper discharge of waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for dichloromethane at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe with respect to dichloromethane.

21. 1,2-Dichloropropane. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that 1,2-dichloropropane is a health concern at certain levels of exposure. This organic chemical is used as a solvent and pesticide. When soil and climatic conditions are favorable, 1,2-dichloropropane may get into drinking water by runoff into surface water or by leaching into ground water. It may also get into drinking water through improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for 1,2-dichloropropane at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to 1,2-dichloropropane.

22. 2,4-D. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that 2,4-D is a health concern at certain levels of exposure. This organic chemical is used as a herbicide and to control algae in reservoirs. When soil and climatic conditions are favorable, 2,4-D may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to damage the liver and kidney of laboratory animals such as rats exposed at high levels during their lifetimes. Some humans who were exposed to relatively large amounts of this chemical also suffered damage to the nervous system. EPA has set the drinking water standard for 2,4-D at 0.07 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to 2,4-D.

23. Di(2-ethylhexyl)adipate. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that di(2-ethylhexyl)adipate is a health concern at certain levels of exposure. Di(2-ethylhexyl)adipate is a widely used plasticizer in a variety of products, including synthetic rubber, food packaging materials and cosmetics. It may get into drinking water after improper waste disposal. This chemical has been shown to damage liver and testes in laboratory animals such as rats and mice exposed to high levels. EPA has set the drinking water standard for di(2-ethylhexyl)adipate at 0.4 parts per million (ppm) to protect against the risk of adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to di(2-ethylhexyl)adipate.

24. Di(2-ethylhexyl)phthalate. The United States

Environmental Protection Agency (EPA) sets drinking water standards and has determined that di(ethylhexyl)phthalate is a health concern at certain levels of exposure. Di(2-ethylhexyl)phthalate is a widely used plasticizer, which is primarily used in the production of polyvinyl chloride (PVC) resins. It may get into drinking water after improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice exposed to high levels over their lifetimes. EPA has set the drinking water standard for di(2-ethylhexyl)phthalate at 0.004 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to di(2-ethylhexyl)phthalate.

25. Dinoseb. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that dinoseb is a health concern at certain levels of exposure. Dinoseb is a widely used pesticide and generally gets into drinking water after application on orchards, vineyards and other crops. This chemical has been shown to damage the thyroid and reproductive organs in laboratory animals such as rats exposed to high levels. EPA has set the drinking water standard for dinoseb at 0.007 parts per million (ppm) to protect against the risk of adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to dinoseb.

26. Diquat. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that diquat is a health concern at certain levels of exposure. This organic chemical is a herbicide used to control terrestrial and aquatic weeds. It may get into drinking water by runoff into surface water. This chemical has been shown to damage the liver, kidney and gastrointestinal tract and causes cataract formation in laboratory animals such as dogs and rats exposed at high levels over their lifetimes. EPA has set the drinking water standard for diquat at 0.02 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to diquat.

27. Endothall. The United States Environmental has determined that endothall is a health concern at certain levels of exposure. This organic chemical is a herbicide used to control terrestrial and aquatic weeds. It may get into water by runoff into surface water. This chemical has been shown to damage the liver, kidney, gastrointestinal tract and reproductive system of laboratory animals such as rats and mice exposed at high levels over their lifetimes. EPA has set the drinking water standard for endothall at 0.1 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to endothall.

28. Endrin. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that endrin is a health concern at certain levels of exposure. This organic chemical is a pesticide no longer registered for use in the United States. However, this chemical is persistent in treated soils and accumulates in sediments and aquatic and terrestrial biota. This chemical has been shown to cause damage to the liver, kidney and heart in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. EPA has set the drinking water standard for endrin at 0.002 parts per million (ppm) to protect against the risk of these adverse health effects which have been observed in laboratory animals. Drinking water that meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to endrin.

29. Epichlorohydrin. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that epichlorohydrin is a health concern at certain levels of exposure. Polymers made from epichlorohydrin are sometimes used in the treatment of water supplies as a flocculent to remove particulates. Epichlorohydrin generally gets into drinking water by improper use of these polymers. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for epichlorohydrin using a treatment technique to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. This treatment technique limits the amount of epichlorohydrin in the polymer and the amount of the polymer which may be added to drinking water as a flocculent to remove particulates. Drinking water systems which comply with this treatment technique have little to no risk and are considered safe with respect to epichlorohydrin.

30. Ethylbenzene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined ethylbenzene is a health concern at certain levels of exposure. This organic chemical is a major component of gasoline. It generally gets into water by improper waste disposal or leaking gasoline tanks. This chemical has been shown to damage the kidney, liver, and nervous system of laboratory animals such as rats exposed to high levels during their lifetimes. EPA has set the drinking water standard for ethylbenzene at 0.7 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to ethylbenzene.

31. Ethylene dibromide (EDB). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that EDB is a health concern at certain levels of exposure. This organic chemical was once a popular pesticide. When soil and climatic conditions are favorable, EDB may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for EDB at 0.00005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets this standard is associated with little to none of this risk

and is considered safe with respect to EDB.

32. Glyphosate. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that glyphosate is a health concern at certain levels of exposure. This organic chemical is a herbicide used to control grasses and weeds. It may get into drinking water by runoff into surface water. This chemical has been shown to cause damage to the liver and kidneys in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. EPA has set the drinking water standard for glyphosate at 0.7 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to glyphosate.

33. Heptachlor. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that heptachlor is a health concern at certain levels of exposure. This organic chemical was once a popular pesticide. When soil and climatic conditions are favorable, heptachlor may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standards for heptachlor at 0.0004 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets this standard is associated with little to none of this risk and is considered safe with respect to heptachlor.

34. Heptachlor epoxide. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that heptachlor epoxide is a health concern at certain levels of exposure. This organic chemical was once a popular pesticide. When soil and climatic conditions are favorable, heptachlor epoxide may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standards for heptachlor epoxide at 0.0002 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets this standard is associated with little to none of this risk and is considered safe with respect to heptachlor epoxide.

35. Hexachlorobenzene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that hexachlorobenzene is a health concern at certain levels of exposure. This organic chemical is produced as an impurity in the manufacture of certain solvents and pesticides. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed to high levels during their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for hexachlorobenzene at 0.001 parts per million (ppm) to protect against the risk of cancer and other adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to hexachlorobenzene.

36. Hexachlorocyclopentadiene. The United States Environmental Protection Agency (EPA) establishes drinking water standards and has determined that hexachlorocyclopentadiene is a health concern at certain levels of exposure. This organic chemical is used as an intermediate in the manufacture of pesticides and flame retardants. It may get into water by discharge from production facilities. This chemical has been shown to damage the kidney and the stomach of laboratory animals when exposed at high levels over their lifetimes. EPA has set the drinking water standard for hexachlorocyclopentadiene at 0.05 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to hexachlorocyclopentadiene.

37. Lindane. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that lindane is a health concern at certain levels of exposure. This organic chemical is used as a pesticide. When soil and climatic conditions are favorable, lindane may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to damage the liver, kidney, nervous system, and immune system of laboratory animals such as rats, mice and dogs exposed at high levels during their lifetimes. Some humans who were exposed to relatively large amounts of this chemical also suffered damage to the nervous system and circulatory system. EPA has established the drinking water standard for lindane at 0.0002 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to lindane.

38. Methoxychlor. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that methoxychlor is a health concern at certain levels of exposure. This organic chemical is used as a pesticide. When soil and climatic conditions are favorable, methoxychlor may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to damage the liver, kidney, nervous system, and reproductive system of laboratory animals such as rats exposed at high levels during their lifetimes. It has also been shown to produce growth retardation in rats. EPA has set the drinking water standard for methoxychlor at 0.04 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to methoxychlor.

39. Monochlorobenzene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that monochlorobenzene is a health concern at certain levels of exposure. This organic chemical is used as a solvent. It generally gets into water by improper waste disposal. This chemical has been shown to

damage the liver, kidney and nervous system of laboratory animals such as rats and mice exposed to high levels during their lifetimes. EPA has set the drinking water standard for monochlorobenzene at 0.1 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to monochlorobenzene.

40. Oxamyl. The United States Environmental Protection Agency (EPA) establishes drinking water standards and has determined that oxamyl is a health concern at certain levels of exposure. This organic chemical is used as a pesticide for the control of insects and other pests. It may get into drinking water by runoff into surface water or leaching into ground water. This chemical has been shown to damage the kidneys of laboratory animals such as rats when exposed at high levels over their lifetimes. EPA has set the drinking water standard for oxamyl at 0.2 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to oxamyl.

41. Picloram. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that picloram is a health concern at certain levels of exposure. This organic chemical is used as a pesticide for broadleaf weed control. It may get into drinking water by runoff into surface water or leaching into ground water as a result of pesticide application and improper waste disposal. This chemical has been shown to cause damage to the kidneys and liver in laboratory animals such as rats when the animals are exposed at high levels over their lifetimes. EPA has set the drinking water standard for picloram at 0.5 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to picloram.

42. Polychlorinated biphenyls (PCBs). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that polychlorinated biphenyls (PCBs) are a health concern at certain levels of exposure. These organic chemicals were once widely used in electrical transformers and other industrial equipment. They generally get into drinking water by improper waste disposal or leaking electrical industrial equipment. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for PCBs at 0.0005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets this standard is associated with little to none of this risk and is considered safe with respect to PCBs.

43. Pentachlorophenol. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that pentachlorophenol is a health concern at certain levels of exposure. This organic chemical is used as a wood preservative, herbicide, disinfectant, and defoliant. It generally gets into drinking water by runoff into surface water or leaching into ground water. This chemical has been shown to produce adverse reproductive effects and to damage the liver and kidneys of laboratory animals such as rats exposed to high levels during their lifetimes. Some humans who were exposed to relatively large amounts of this chemical also suffered damage to the liver and kidneys. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed to high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for pentachlorophenol at 0.001 parts per million (ppm) to protect against the risk of cancer or other adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to pentachlorophenol

44. Simazine. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that simazine is a health concern at certain levels of exposure. This organic chemical is a herbicide used to control annual grasses and broadleaf weeds. It may leach into ground water or runs off into surface water after application. This chemical may cause cancer in laboratory animals such as rats and mice exposed at high levels during their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for simazine at 0.004 parts per million (ppm) to reduce the risk of cancer or other adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to simazine.

45. Styrene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that styrene is a health concern at certain levels of exposure. This organic chemical is commonly used to make plastics and is sometimes a component of resins used for drinking water treatment. Styrene may get into drinking water from improper waste disposal. This chemical has been shown to damage the liver and nervous system in laboratory animals when exposed at high levels during their lifetimes. EPA has set the drinking water standard for styrene at 0.1 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to styrene.

46. Tetrachloroethylene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that tetrachloroethylene is a health concern at certain levels of exposure. This organic chemical has been a popular solvent, particularly for dry cleaning. It generally gets into drinking water by improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for tetrachloroethylene at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets this standard is associated

with little to none of this risk and is considered safe with respect to tetrachloroethylene.

47. Toluene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that toluene is a health concern at certain levels of exposure. This organic chemical is used as a solvent and in the manufacture of gasoline for airplanes. It generally gets into water by improper waste disposal or leaking underground storage tanks. This chemical has been shown to damage the kidney, nervous system, and circulatory system of laboratory animals such as rats and mice exposed to high levels during their lifetimes. Some industrial workers who were exposed to relatively large amounts of this chemical during working careers also suffered damage to the liver, kidney and nervous system. EPA has set the drinking water standard for toluene at 1 part per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to toluene.

48. Toxaphene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that toxaphene is a health concern at certain levels of exposure. This organic chemical was once a pesticide widely used on cotton, corn, soybeans, pineapples and other crops. When soil and climatic conditions are favorable, toxaphene may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for toxaphene at 0.003 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets this standard is associated with little to none of this risk and is considered safe with respect to toxaphene.

49. 1,2,4-Trichlorobenzene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that 1,2,4-trichlorobenzene is a health concern at certain levels of exposure. This organic chemical is used as a dye carrier and as a precursor in herbicide manufacture. It generally gets into drinking water by discharges from industrial activities. This chemical has been shown to cause damage to several organs, including the adrenal glands. EPA has set the drinking water standard for 1,2,4-trichlorobenzene at 0.07 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to 1,2,4-trichlorobenzene.

50. 1,1,2-Trichloroethane. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined 1,1,2-trichloroethane is a health concern at certain levels of exposure. This organic chemical is an intermediate in the production of 1,1-dichloroethylene. It generally gets into water by industrial discharge of wastes. This chemical has been shown to damage the kidney and liver of laboratory animals such as rats exposed to high levels during their lifetimes. EPA has set the drinking water standard for 1,1,2-trichloroethane at 0.005 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to 1,1,2-trichloroethane.

51. Trichloroethylene. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that trichloroethylene is a health concern at certain levels of exposure. This chemical is a common metal cleaning and dry cleaning fluid. It generally gets into drinking water by improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals may also increase the risk of cancer in humans who are exposed at lower levels over long periods of time. EPA has set forth the enforceable drinking water standard for trichloroethylene at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

52. 1,1,1-Trichloroethane. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that the 1,1,1-trichloroethane is a health concern at certain levels of exposure. This chemical is used as a cleaner and degreaser of metals. It generally gets into drinking water by improper waste disposal. This chemical has been shown to damage the liver, nervous system, and circulatory system of laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Some industrial workers who were exposed to relatively large amounts of this chemical during their working careers also suffered damage to the liver, nervous system, and circulatory system. Chemicals which cause adverse effects among exposed industrial workers and in laboratory animals also may cause adverse health effects in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for 1,1,1-trichloroethane at 0.2 parts per million (ppm) to protect against the risk of these adverse health effects which have been observed in humans and laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

53. 2,3,7,8-TCDD (Dioxin). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that dioxin is a health concern at certain levels of exposure. This organic chemical is an impurity in the production of some pesticides. It may get into drinking water by industrial discharge of wastes. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for dioxin at 0.00000003 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this

risk and should be considered safe with respect to dioxin.

54. 2,4,5-TP. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that 2,4,5-TP is a health concern at certain levels of exposure. This organic chemical is used as a herbicide. When soil and climatic conditions are favorable, 2,4,5-TP may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to damage the liver and kidney of laboratory animals such as rats and dogs exposed to high levels during their lifetimes. Some industrial workers who were exposed to relatively large amounts of this chemical during working careers also suffered damage to the nervous system. EPA has set the drinking water standard for 2,4,5-TP at 0.05 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to 2,4,5-TP.

55. Vinyl chloride. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that vinyl chloride is a health concern at certain levels of exposure. This chemical is used in industry and is found in drinking water as a result of the breakdown of related solvents. The solvents are used as cleaners and degreasers of metals and generally get into drinking water by improper waste disposal. This chemical has been associated with significantly increased risks of cancer among certain industrial workers who were exposed to relatively large amounts of this chemical during their working careers. This chemical has also been shown to cause cancer in laboratory animals when the animals are exposed at high levels over their lifetimes. Chemicals that cause an increased risk of cancer among exposed industrial workers and in laboratory animals also may increase the risk of cancer in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for vinyl chloride at 0.002 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in humans and laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

56. Xylenes. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that xylene is a health concern at certain levels of exposure. This organic chemical is used in the manufacture of gasoline for airplanes and as a solvent for pesticides, and as a cleaner and degreaser of metals. It usually gets into water by improper waste disposal. This chemical has been shown to damage the liver, kidney and nervous system of laboratory animals such as rats and dogs exposed to high levels during their lifetimes. Some humans who were exposed to relatively large amounts of this chemical also suffered damage to the nervous system. EPA has set the drinking water standard for xylene at 10 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to xylene.

7.4 Public Notice by the Executive Secretary

The State may give notice to the public required by this section on behalf of the owner or operator of the public water system if the State complies with the requirements of this section. However, the owner or operator of the public water system remains legally responsible for ensuring that the requirements of this section are met.

7.5 Unusual Circumstances Requiring Broader Notice

In any instance in which notification by mail is required by this section but notification by newspaper or to radio or television stations is not required, the Executive Secretary may order the supplier of water to provide notification by newspaper and to radio and television stations when circumstances make more immediate or broader notice appropriate to protect the public health.

Where public notification is required by these regulations, the supplier must forward a copy of the public notification to the Executive Secretary and information that shows proper public notification has been carried out. The supplier shall submit the copy of the notice within ten days of completion of each public notification.

R309-104-8. Record Maintenance.

All public water systems shall retain on their premises or at convenient location near their premises the following records:

a. Records of bacteriologic analyses made pursuant to this Section shall be kept for not less than five years. Records of chemical analyses made pursuant to this Section shall be kept for not less than ten years. Actual laboratory reports may be kept, or data may be transferred to tabular summaries, provided that the following information is included:

1. The date, place and time of sampling, and the name of the person who collected the sample;

2. Identification of the sample as to whether it was a routine distribution system sample, check sample, raw or process water sample or other special purpose sample.

3. Date of analysis;

4. Laboratory and person responsible for performing analysis;

5. The analytical technique/method used; and

6. The results of the analysis.

b. Lead and copper recordkeeping requirements.

1. Any water system subject to the requirements of R309-104-4.2 shall retain on its premises original records of all sampling data and analyses, reports, surveys, letters, evaluations, schedules, State determinations, and any other information required by R309-104-4.2.

2. Each water system shall retain the records required by this section for no fewer than 12 years.

c. Records of action taken by the system to correct violations of primary drinking water regulations shall be kept for a period not less than three years after the last action taken with respect to the particular violation involved.

d. Copies of any written reports, summaries or communications relating to sanitary surveys of the system conducted by the system itself, by a private consultant, or by any local, State or Federal agency, shall be kept for a period not less than ten years after completion of the sanitary survey involved.

e. Records concerning a variance or exemption granted to the system shall be kept for a period ending not less than five years following the expiration of such variance or exemption.

f. Records that concern the tests of a backflow prevention

assembly and location shall be kept by the system for a minimum of not less than five years from the date of the test.

R309-104-9. Definitions.

Action level - is the concentration of lead or copper in water specified in R309-103-2.2 which determines, in some cases, the corrosion control treatment, public education, and lead line replacement requirements that a water system is required to complete.

Best available technology (BAT) - means the best technology, treatment techniques, or other means which the Executive Secretary finds, after examination under field conditions and not solely under laboratory conditions, are available (taking cost into consideration). For the purposes of setting MCLs for synthetic organic chemicals, any BAT must be at least as effective as granular activated carbon for all these chemicals except vinyl chloride. Central treatment using packed tower aeration is also identified as BAT for synthetic organic chemicals.

Board - means the Drinking Water Board.

Compliance cycle - means the nine-year calendar year cycle during which public water systems must monitor. Each compliance cycle consists of three three-year compliance periods. The first calendar year cycle begins January 1, 1993 and ends December 31, 2001; the second begins January 1, 2002 and ends December 31, 2010; the third begins January 1, 2011 and ends December 31, 2019.

Compliance period - means a three-year calendar year period within a compliance cycle. Each compliance cycle has three three-year compliance periods. Within the first compliance cycle, the first compliance period runs from January 1, 1993 to December 31, 1995; the second from January 1, 1996 to December 31, 1998; the third from January 1, 1999 to December 31, 2001.

Community water system - means a public water system which serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents.

Confirmed SOC contamination area - means an area surrounding and including a plume of SOC contamination of the soil or water which previous monitoring results have confirmed. The area boundaries may be determined by measuring 3,000 feet horizontally from the outermost edges of the confirmed plume. The area includes deeper aquifers even though only the shallow aquifer is the one contaminated.

Confluent growth - means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion of the filtration area in which discrete bacterial colonies can not be distinguished.

Contaminant - means any physical, chemical, biological, or radiological substance or matter in water.

Corrosion inhibitor - means a substance capable of reducing the corrosivity of water toward metal plumbing materials, especially lead and copper, by forming a protective film on the interior surface of those materials.

Disinfection - means the use of any oxidant, including but not limited to chlorine, chlorine dioxide, chloramines, and ozone added to water in any part of the treatment process.

Dose equivalent - means the product of the absorbed dose from ionizing radiation and such factors as account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission on Radiologic Units and Measurements (ICRU).

Executive Secretary - means the Executive Secretary of the Drinking Water Board.

First draw sample - means a one-liter sample of tap water, collected in accordance with R309-104-4.2.3.b.2., that has been standing in plumbing pipes at least 6 hours and is collected without flushing the tap.

Geometric Mean - the geometric mean of a set of N numbers X_1, X_2, X_3,...., X_N is the Nth root of the product of the numbers.

Gross alpha particle activity - means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

Ground water source - means a source of culinary water captured underground. This term includes wells and springs.

Initial compliance period - means the first full three-year compliance period which begins at least 18 months after promulgation, except for contaminants listed in R309-103-2.3.a(19) to (33), R309-103-2.3.b(19) to (21), and R309-103-2.1.c(1), (5), (8), (11), and (18), initial compliance period means the first full three-year compliance after promulgation for systems with 150 or more service connections (January 1993-December 1995), and first full three-year compliance period after the effective date of the regulation (January 1996-December 1998) for systems having fewer than 150 service connections.

Large water system - for the purposes of R309-104-4.2 only, means a water system that serves more than 50,000 persons.

Lead service line - means a service line made of lead which connects the water main to the building inlet and any lead pigtail, gooseneck or other fitting which is connected to such lead line.

Man-made beta particle and photon emitters - means all radionuclides emitting beta particles and/or photons listed in Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure, NBS Handbook 69, except the daughter products of thorium-232, uranium-235 and uranium 238.

Maximum contaminant level - means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.

Medium-size water system - for the purposes of R309-104-4.2 only, means a water system that serves greater than 3,300 and less than or equal to 50,000 persons.

Metropolitan area sources - means all sources within a metropolitan area. A metropolitan area is further defined to contain at least 3,300 year round residents. A small water system which has sources within a metropolitan system's service area, may have those sources classified as a metropolitan area source.

Must - means that a particular action is obliged and has to be accomplished.

Near the first service connection - means one of the service connections within the first 20 percent of all service connections

that are nearest to the treatment facilities.

Non-community water system - means a public water system that is not a community water system or a non-transient non-community water system.

Non-distribution system plumbing problem - means a coliform contamination problem in a public water system with more than one service connection that is limited to the specific service connection from which a coliform-positive sample was taken.

Non-Transient Non-Community Water System - means a public water system that is not a community system and that regularly serves at least 25 of the same persons for more than six months per year. Examples are separate systems serving workers and schools.

Optimal corrosion control treatment - for the purposes of R309-104-4.2 only, means the corrosion control treatment that minimizes the lead and copper concentrations at users' taps while insuring that the treatment does not cause the water system to violate any national primary drinking water regulations.

PCBs - means a group of chemicals that contain polychlorinated biphenyl.

Picocurie (pCi) - means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

Practical Quantitation Level (PQL) - means the required analysis standard for laboratory certification to perform lead and copper analyses. The PQL for lead is .005 milligrams per liter and the PQL for copper is 0.050 milligrams per liter.

Public Water System - means a system, either publicly or privately owned, providing water for human consumption and other domestic uses which has at least fifteen service connections, or regularly serves an average of at least twenty-five individuals daily for at least sixty days out of the year. Such term includes collection, treatment, storage and distribution facilities under control of the operator and used primarily in connection with the system. Additionally, the term includes collection, pretreatment or storage facilities used primarily in connection with the system but not under such control.

Rem - means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system. A "millirem (mrem)" is 1/1000 of a rem.

Repeat compliance period - means any subsequent compliance period after the initial compliance period.

Secondary Maximum Contaminant Level - means the advisable maximum level of a contaminant in water which is delivered to any user of a public water system.

Service line sample - means a one-liter sample of water collected in accordance with R309-104-4.2.3.b.3, that has been standing for at least 6 hours in a service line.

Shall - means that a particular action is obliged and has to be accomplished.

Should - means that a particular action is recommended but does not have to be accomplished.

Single family structure - for the purposes of R309-104-4.2 only, means a building constructed as a single-family residence that is currently used as either a residence or a place of business.

Small water system - for the purposes of R309-104-4.2 only, means a water system that serves 3,300 persons or fewer.

SOCs - means synthetic organic chemicals.

Standard sample - means the aliquot of finished drinking water that is examined for the presence of coliform bacteria.

Supplier of water - means any person who owns or operates a public water system.

Surface water source - means a source of culinary water which lies or travels on the surface prior to its capture for use in a culinary water system.

System with a single service connection - means a system which supplies drinking water to consumers via a single service line.

Too numerous to count (TNTC) - means that the total number of bacterial colonies exceeds 200 on a 47 mm diameter membrane filter used for coliform detection.

Total Trihalomethanes (TTHM) - means the MCL for trihalomethanes. This is the sum of four of the ten possible isomers of chlorine/bromine/methane compounds, all known as trihalomethanes (THM). TTHM is defined as the arithmetic sum of the concentrations in micro grams per liter of only four of these, i.e. of chloroform, bromodichloromethane dibromochloromethane, and bromoform, rounded to two significant figures. This measurement is made by samples which are "quenched" meaning that a chlorine neutralizing agent has been added, preventing further THM formation in the samples.

Trihalomethanes (THM) - means any one or all members of this class of organic compounds.

Trihalomethane Formation Potential (THMFP) - means samples that are collected just following disinfection and measure the highest possible TTHM value to be expected in the water distribution system. The distribution system need not be tested if this test is run on groundwater systems. The formation potential is measured by not neutralizing the disinfecting agent at the time of collection, but storing the sample 7 days at 25 degrees C prior to analysis. A chlorine residual must be present in these samples at the end of the seven day period prior to analysis for the samples to be considered valid for this test. Samples without a residual at the end of this period may not be used to determine compliance and must be resampled if this test is desired.

Waterborne disease outbreak - means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system which is deficient in treatment, as determined by the appropriate local or State agency.

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R309. Environmental Quality, Drinking Water.
R309-113. Drinking Water Source Protection.
R309-113-1. Authority.

Under authority of Section 19-4-104(1)(a)(iv), the Drinking Water Board adopts this rule which governs the protection of ground-water sources of drinking water.

R309-113-2. Purpose.

Public Water Systems (PWSs) are responsible for protecting their sources of drinking water from contamination. R309-113 sets forth minimum requirements to establish a uniform, statewide program for implementation by PWSs to protect their ground-water sources of drinking water. PWSs are encouraged to enact more stringent programs to protect their sources of drinking water if they decide they are necessary.

R309-113 applies to all ground-water sources of drinking water which are used by PWSs to supply their systems except sources which are under the direct influence of surface water and are treated in accordance with surface water treatment rules (refer to R309-206 through R309-208). Additionally, compliance with this rule is voluntary for existing ground-water sources of drinking water which are used by public (transient) non-community water systems.

R309-113-3. Implementation.

(1) New Ground-Water Sources - Each PWS shall submit a Preliminary Evaluation Report (PER) in accordance with R309-113-13(2) for each of its new ground-water sources to the Division of Drinking Water (DDW).

(2) Existing Ground-Water Sources - Each PWS shall submit a Drinking Water Source Protection (DWSP) Plan in accordance with R309-113-7(1) for each of its existing ground-water sources to DDW according to the following schedule. Well fields or groups of springs may be considered to be a single source.

TABLE 1

Population Served By PWS:	Percent Of Sources:	DWSP Plans Due By:
Over 10,000	50% of wells	December 31, 1995
Over 10,000	100% of wells	December 31, 1996
3,300-10,000	100% of wells	December 31, 1997
Less than 3,300	100% of wells	December 31, 1998
Springs and other sources	100%	December 31, 1999

(3) PWSs shall maintain all land use agreements which were established under previous rules to protect their ground-water sources of drinking water from contamination. Additionally, PWSs shall maintain land ownership and land-use agreements established under previous rules with new owners which prohibit these new owners from locating pollution sources within protection zones.

R309-113-4. Exceptions.

(1) Exceptions to the requirements of R309-113 or parts thereof may be granted by the Executive Secretary to PWSs if: due to compelling factors (which may include economic factors), a PWS is unable to comply with these requirements, and the granting of an exception will not result in an unreasonable risk to health.

(2) The Executive Secretary may prescribe a schedule by which the PWS must come into compliance with the requirements of R309-113.

R309-113-5. Designated Person.

(1) A designated person shall be appointed and reported in writing to the Executive Secretary by each PWS within 180 days of the effective date of R309-113. The designated person's address and telephone number shall be included in the written correspondence. Additionally, the above information must be included in each DWSP Plan and PER that is submitted to DDW.

(2) Each PWS shall notify the Executive Secretary in writing within 30 days of any changes in the appointment of a designated person.

R309-113-6. Definitions.

(1) The following terms are defined for the purposes of this rule:

(a) "Collection area" means the area surrounding a ground-water source which is underlain by collection pipes, tile, tunnels, infiltration boxes, or other ground-water collection devices.

(b) "Controls" means the codes, ordinances, rules, and regulations currently in effect to regulate a potential contamination source.

(c) "Criteria" means the conceptual standards that form the basis for DWSP area delineation to include distance, ground-water time of travel, aquifer boundaries, and ground-water divides.

(d) "Criteria threshold" means a value or set of values selected to represent the limits above or below which a given criterion will cease to provide the desired degree of protection.

(e) "DDW" means Division of Drinking Water.

(f) "DWSP Program" means the program to protect drinking water source protection zones and management areas from contaminants that may have an adverse effect on the health of persons.

(g) "DWSP Zone" means the surface and subsurface area surrounding a ground-water source of drinking water supplying a PWS, through which contaminants are reasonably likely to move toward and reach such ground-water source.

(h) "Designated person" means the person appointed by a PWS to ensure that the requirements of R309-113 are met.

(i) "Executive Secretary" means the individual authorized by the Drinking Water Board to conduct business on its behalf.

(j) "Existing ground-water source of drinking water" means a public supply ground-water source for which plans and specifications were submitted to DDW on or before July 26, 1993.

(k) "Ground-water Source" means any well, spring, tunnel, adit, or other underground opening from or through which ground-water flows or is pumped from subsurface water-bearing formations.

(l) "Hydrogeologic methods" means the techniques used to translate selected criteria and criteria thresholds into mappable delineation boundaries. These methods include, but are not limited to, arbitrary fixed radii, analytical calculations

and models, hydrogeologic mapping, and numerical flow models.

(m) "Land management strategies" means zoning and non-zoning controls which include, but are not limited to, the following: zoning and subdivision ordinances, site plan reviews, design and operating standards, source prohibitions, purchase of property and development rights, public education programs, ground-water monitoring, household hazardous waste collection programs, water conservation programs, memoranda of understanding, written contracts and agreements, and so forth.

(n) "Land use agreement" means a written agreement wherein the owner(s) agrees not to locate or allow the location of uncontrolled potential contamination sources or pollution sources within zone one of new wells in protected aquifers. The owner(s) must also agree not to locate or allow the location of pollution sources within zone two of new wells in unprotected aquifers and new springs unless the pollution source agrees to install design standards which prevent contaminated discharges to ground water. This restriction must be binding on all heirs, successors, and assigns. Land use agreements must be recorded with the property description in the local county recorder's office. Refer to R309-113-13(2)(d).

Land use agreements for protection areas on publicly owned lands need not be recorded in the local county recorder office. However, a letter must be obtained from the Administrator of the land in question and meet the requirements described above.

(o) "Management area" means the area outside of zone one and within a two-mile radius where the Optional Two-mile Radius Delineation Procedure has been used to identify a protection area.

For wells, land may be excluded from the DWSP management area at locations where it is more than 100 feet lower in elevation than the total drilled depth of the well.

For springs and tunnels, the DWSP management area is all land at elevation equal to or higher than, and within a two-mile radius, of the spring or tunnel collection area. The DWSP management area also includes all land lower in elevation than, and within 100 horizontal feet, of the spring or tunnel collection area. The elevation datum to be used is the point of water collection. Land may also be excluded from the DWSP management area at locations where it is separated from the ground-water source by a surface drainage which is lower in elevation than the spring or tunnel collection area.

(p) "New ground-water source of drinking water" means a public supply ground-water source of drinking water for which plans and specifications are submitted to DDW after July 26, 1993.

(q) "Nonpoint source" means any conveyance not meeting the definition of point source.

(r) "PWS" means public water system.

(s) "Point source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, animal feeding operation with more than ten animal units, landfill, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(t) "Pollution source" means point source discharges of contaminants to ground water or potential discharges of the liquid forms of "extremely hazardous substances" which are stored in containers in excess of "applicable threshold planning quantities" as specified in SARA Title III. Examples of possible pollution sources include, but are not limited to, the following: storage facilities that store the liquid forms of extremely hazardous substances, septic tanks, drain fields, class V underground injection wells, landfills, open dumps, landfilling of sludge and septage, manure piles, salt piles, pit privies, drain lines, and animal feeding operations with more than ten animal units.

The following definitions are part of R309-113 and clarify the meaning of "pollution source:"

(i) "Animal feeding operation" means a lot or facility where the following conditions are met: animals have been or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period, and crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. Two or more animal feeding operations under common ownership are considered to be a single feeding operation if they adjoin each other, if they use a common area, or if they use a common system for the disposal of wastes.

(ii) "Animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers; the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

(iii) "Extremely hazardous substances" means those substances which are identified in the Sec. 302(EHS) column of the "TITLE III LIST OF LISTS - Consolidated List of Chemicals Subject to Reporting Under SARA Title III," (EPA 550-B-96-015). A copy of this document may be obtained from: NCEPI, PO Box 42419, Cincinnati, OH 45202. Online ordering is also availabe at http://www.epa.gov/ncepihom/orderpub.html.

(u) "Potential contamination source" means any facility or site which employs an activity or procedure which may potentially contaminate ground water. A pollution source is also a potential contamination source.

(v) "Protected aquifer" means a producing aquifer in which the following conditions are met:

(i) A naturally protective layer of clay, at least 30 feet in thickness, is present above the aquifer;

(ii) the PWS provides data to indicate the lateral continuity of the clay layer to the extent of zone two; and

(iii) the public-supply well is grouted with a grout seal that extends from the ground surface down to at least 100 feet below the surface, and for a thickness of at least 30 feet through the protective clay layer.

(w) "Replacement well" means a public-supply well drilled for the sole purpose of replacing an existing public-supply well which is impaired or made useless by structural difficulties and in which the following conditions are met:

(i) the proposed well location shall be within a radius of 150 feet from an existing ground-water supply well, as defined

in R309-113-6(1)(j); and

(ii) the PWS provides a copy of the replacement application approved by the State Engineer (refer to Section 73-3-28 of the Utah Code Annotated).

(x) "Time of travel" means the time required for a particle of water to move in the producing aquifer from a specific point to a ground-water source of drinking water.

(y) "Unprotected aquifer" means any aquifer that does not meet the definition of a protected aquifer.

(z) "Wellhead" means the physical structure, facility, or device at the land surface from or through which ground-water flows or is pumped from subsurface, water-bearing formations.

R309-113-7. DWSP Plans.

(1) Each PWS shall develop, submit, and implement a DWSP Plan for each of its ground-water sources of drinking water.

Required Sections for DWSP Plans - DWSP Plans should be developed in accordance with the "Standard Report Format for Existing Wells and Springs." This document may be obtained from DDW. DWSP Plans must include the following seven sections:

(a) DWSP Delineation Report - A DWSP Delineation Report in accordance with R309-113-9(5) is the first section of a DWSP Plan.

(b) Potential Contamination Source Inventory and Assessment of Controls - A Prioritized Inventory of Potential Contamination Sources and an assessment of their controls in accordance with R309-113-10 is the second section of a DWSP Plan.

(c) Management Program to Control Each Preexisting Potential Contamination Source - A Management Program to Control Each Preexisting Potential Contamination Source in accordance with R309-113-11 is the third section of a DWSP Plan.

(d) Management Program to Control or Prohibit Future Potential Contamination Sources - A Plan for Controlling or Prohibiting Future Potential Contamination Sources is the fourth section of a DWSP Plan. This must be in accordance with R309-113-12, consistent with the general provisions of this rule, and implemented to an extent allowed under the PWS's authority and jurisdiction.

(e) Implementation Schedule - Each PWS shall develop a step-by-step implementation schedule which lists each of its proposed land management strategies with an implementation date for each strategy.

(f) Resource Evaluation - Each PWS shall assess the financial and other resources which may be required for it to implement each of its DWSP Plans and determine how these resources may be acquired.

(g) Recordkeeping - Each PWS shall document changes in each of its DWSP Plans as they are continuously updated to show current conditions in the protection zones and management areas. As a DWSP Plan is executed, the PWS shall document any land management strategies that are implemented. These documents may include any of the following: ordinances, codes, permits, memoranda of understanding, public education programs, and so forth.

(2) DWSP Plan Administration - DWSP Plans shall be submitted, corrected, retained, implemented, updated, and revised according to the following:

(a) Submitting DWSP Plans - Each PWS shall submit a DWSP Plan to DDW in accordance with the schedule in R309-113-3(2) for each of its ground-water sources of drinking water.

(b) Correcting Deficiencies - Each PWS shall correct any deficiencies in a disapproved DWSP Plan and resubmit it to DDW within 90 days of the disapproval date.

(c) Retaining DWSP Plans - Each PWS shall retain on its premises a current copy of each of its DWSP Plans. DWSP Plans shall be made available to the public upon request.

(d) Implementing DWSP Plans - Each PWS shall begin implementing each of its DWSP Plans in accordance with its schedule in R309-113-7(1)(e), within 180 days after submittal if they are not disapproved by DDW.

(e) Updating and Resubmitting DWSP Plans - Each PWS shall update its DWSP Plans as often as necessary to ensure they show current conditions in the DWSP zones and management areas. Updated plans also document the implementation of land management strategies in the recordkeeping section. DWSP Plans are initially due according to the schedule in R309-113-3. Thereafter, updated DWSP Plans are due every six years from their original due date. This applies even though a PWS may have been granted an extension beyond the original due date.

(f) Revising DWSP Plans - Each PWS shall submit a revised DWSP Plan to DDW within 180 days after the reconstruction or redevelopment of any ground-water source of drinking water which addresses changes in source construction, source development, hydrogeology, delineation, potential contamination sources, and proposed land management strategies.

R309-113-8. DWSP Plan Review.

(1) DDW shall review each DWSP Plan submitted by PWSs and "concur," "concur with recommendations," "conditionally concur" or "disapprove" the plan.

(2) DDW may "disapprove" DWSP Plans for any of the following reasons:

(a) An inaccurate DWSP Delineation Report, a report that uses a non-applicable delineation method, or a DWSP Plan that is missing this report or any of the information and data required in it (refer to R309-113-9(5));

(b) an inaccurate Prioritized Inventory of Potential Contamination Sources or a DWSP Plan that is missing this report or any of the information required in it (refer to R309-113-10(1));

(c) an inaccurate assessment of current controls (refer to R309-113-10(2));

(d) a missing Management Program to Control Each Preexisting Potential Contamination Source which has been assessed as "not adequately controlled" by the PWS (refer to R309-113-11(1));

(e) a missing Management Program to Control or Prohibit Future Potential Contamination Sources (refer to R309-113-12);

(f) a missing Implementation Schedule, Resource Evaluation, Recordkeeping Section, or Contingency Plan (refer to R309-113-7(1)(e)-(g) and R309-113-14).

(3) DDW may "concur with recommendations" when

PWSs propose management programs to control preexisting potential contamination sources or management programs to control or prohibit future potential contamination sources for existing or new drinking water sources which appear inadequate or ineffective.

(4) DDW may "conditionally concur" with a DWSP Plan or PER. The PWS must implement the conditions and report compliance the next time the DWSP Plan is due and submitted to DDW.

R309-113-9. Delineation of Protection Zones and Management Areas.

(1) PWSs shall delineate protection zones or a management area around each of their ground-water sources of drinking water using the Preferred Delineation Procedure or the Optional Two-mile Radius Delineation Procedure. The hydrogeologic method used by PWSs shall produce protection zones or a management area in accordance with the criteria thresholds below. PWSs may also choose to verify protected aquifer conditions to reduce the level of management controls applied in applicable protection areas.

(2) Criteria Thresholds for Ground-water Sources of Drinking Water:

(a) Preferred Delineation Procedure - Four zones are delineated for management purposes:

(i) Zone one is the area within a 100-foot radius from the wellhead or margin of the collection area.

(ii) Zone two is the area within a 250-day ground-water time of travel to the wellhead or margin of the collection area, the boundary of the aquifer(s) which supplies water to the ground-water source, or the ground-water divide, whichever is closer. If the available data indicate a zone of increased ground-water velocity within the producing aquifer(s), then time-of-travel calculations shall be based on this data.

(iii) Zone three (waiver criteria zone) is the area within a 3-year ground-water time of travel to the wellhead or margin of the collection area, the boundary of the aquifer(s) which supplies water to the ground-water source, or the ground-water divide, whichever is closer. If the available data indicate a zone of increased ground-water velocity within the producing aquifer(s), then time-of-travel calculations shall be based on this data.

(iv) Zone four is the area within a 15-year ground-water time of travel to the wellhead or margin of the collection area, the boundary of the aquifer(s) which supplies water to the ground-water source, or the ground-water divide, whichever is closer. If the available data indicate a zone of increased ground-water velocity within the producing aquifer(s), then time-of-travel calculation shall be based on this data.

(b) Optional Two-mile Radius Delineation Procedure - In place of the Preferred Delineation Procedure, PWSs may choose to use the Optional Two-mile Radius Delineation Procedure to delineate a management area. This procedure is best applied in rural areas where few if any potential contamination sources are located. Refer to R309-113-6(1)(o) for the definition of a management area.

(3) Protected Aquifer Classification - PWSs may choose to verify protected aquifer conditions to reduce the level of management controls for a public-supply well which produces water from a protected aquifer(s) or to meet one of the requirements of a VOC or pesticide susceptibility waiver (R309-113-15(4)). Refer to R309-113-6(1)(v) for the definition of a "protected aquifer."

(4) Special Conditions - Special scientific or engineering studies may be conducted to support a request for an exception (refer to R309-113-4) due to special conditions. These studies must be approved by DDW before the PWS begins the study. Special studies may include confined aquifer conditions, ground-water movement through protective layers, wastewater transport and fate, etc.

(5) DWSP Delineation Report - Each PWS shall submit a DWSP Delineation Report to DDW for each of its ground-water sources using the Preferred Delineation Procedure or the Optional Two-mile Radius Delineation Procedure.

(a) Preferred Delineation Procedure - Delineation reports for protection zones delineated using the Preferred Delineation Procedure shall include the following information and a list of all sources or references for this information:

(i) Geologic Data - A brief description of geologic features and aquifer characteristics observed in the well and area of the potential protection zones. This should include the formal or informal stratigraphic name(s), lithology of the aquifer(s) and confining unit(s), and description of fractures and solution cavities (size, abundance, spacing, orientation) and faults (brief description of location in or near the well, and orientation). Lithologic descriptions can be obtained from surface hand samples or well cuttings; core samples and laboratory analyses are not necessary. Fractures, solution cavities, and faults may be described from surface outcrops or drill logs.

(ii) Well Construction Data - If the source is a well, the report shall include the well drillers log, elevation of the wellhead, borehole radius, casing radius, total depth of the well, depth and length of the screened or perforated interval(s), well screen or perforation type, casing type, method of well construction, type of pump, location of pump in the well, and the maximum projected pumping rate of the well. The maximum pumping rate of the well must be used in the delineation calculations. Averaged pumping rate values shall not be used.

(iii) Spring Construction Data - If the source is a spring or tunnel the report shall include a description or diagram of the collection area and method of ground-water collection.

(iv) Aquifer Data for New Wells - A summary report including the calculated hydraulic conductivity of the aquifer, transmissivity, hydraulic gradient, direction of ground-water flow, estimated effective porosity, and saturated thickness of the producing aquifer(s). The PWS shall obtain the hydraulic conductivity of the aquifer from a constant-rate aquifer test and provide the data as described in R309-204-6(10)(b). Estimated effective porosity must be between 1% and 30%. Clay layers shall not be included in calculations of aquifer thickness or estimated effective porosity. This report shall include graphs, data, or printouts showing the interpretation of the aquifer test.

(v) Aquifer Data for Existing Wells - A summary report including the calculated hydraulic conductivity of the aquifer, transmissivity, hydraulic gradient, direction of ground-water flow, estimated effective porosity, and saturated thickness of the producing aquifer(s). The PWS shall obtain the hydraulic

conductivity of the aquifer from a constant-rate aquifer test using the existing pumping equipment. Aquifer tests using observation wells are encouraged, but are not required. If a previously performed aquifer test is available and includes the required data described below, data from that test may be used instead. Estimated effective porosity must be between 1% and 30%. Clay layers shall not be included in calculations of aquifer thickness or estimated effective porosity. This report shall include graphs, data, or printouts showing the interpretation of the aquifer test.

If a constant-rate aquifer test is not practical, then the PWS shall obtain hydraulic conductivity of the aquifer using another appropriate method, such as data from a nearby well in the same aquifer, specific capacity of the well, published hydrogeologic studies of the same aquifer, or local or regional ground-water models. A constant-rate test may not be practical for such reasons as insufficient drawdown in the well, inaccessibility of the well for water-level measurements, or insufficient overflow capacity for the pumped water.

The constant-rate test shall:

(A) Provide for continuous pumping for at least 24 hours or until stabilized drawdown has continued for at least six hours. Stabilized drawdown is achieved when there is less than one foot of change of ground-water level in the well within a six-hour period.

(B) Provide data as described in R309-204-6(10)(b)(v) through (vii).

(vi) Additional Data for Observation Wells - If the aquifer test is conducted using observation wells, the report shall include the following information for each observation well: location and surface elevation; total depth; depth and length of the screened or perforated intervals; radius, casing type, screen or perforation type, and method of construction; prepumping ground-water level; the time-drawdown or distance-drawdown data and curve; and the total drawdown.

(vii) Hydrogeologic Methods and Calculations - These include the ground-water model or other hydrogeologic method used to delineate the protection zones, all applicable equations, values, and the calculations which determine the delineated boundaries of zones two, three, and four. The hydrogeologic method or ground-water model must be reasonably applicable for the aquifer setting. For wells, the hydrogeologic method or ground-water model must include the effects of drawdown (increased hydraulic gradient near the well) and interference from other wells.

(viii) Map Showing Boundaries of the DWSP Zones - A map showing the location of the ground-water source of drinking water and the boundary for each DWSP zone. The base map shall be a 1:24,000-scale (7.5-minute series) topographic map, such as is published by the U.S. Geological Survey. Although zone one (100-foot radius around the well or margin of the collection area) need not be on the map, the complete boundaries for zones two, three, and four must be drawn and labeled. More detailed maps are optional and may be submitted in addition to the map required above.

The PWS shall also include a written description of the distances which define the delineated boundaries of zones two, three, and four. These written descriptions must include the maximum distances upgradient from the well, the maximum distances downgradient from the well, and the maximum widths of each protection zone.

(b) Optional Two-Mile Radius Delineation Procedure - Delineation Reports for protection areas delineated using the Optional Two-mile Radius Delineation Procedure shall include the following information:

(i) Map Showing Boundaries of the DWSP Management Area - A map showing the location of the ground-water source of drinking water and the DWSP management area boundary. The base map shall be a 1:24,000-scale (7.5-minute series) topographic map, such as is published by the U.S. Geological Survey. Although zone one (100-foot radius around the well or margin of the collection area) need not be on the map, the complete two-mile radius must be drawn and labeled. More detailed maps are optional and may be submitted in addition to the map required above.

(ii) Hydrogeologic Report to Exclude a Potential Contamination Source - To exclude a potential contamination source from the inventory which is required in R309-113-10(1), a hydrogeologic report is required which clearly demonstrates that the potential contamination source has no capacity to contaminate the source.

(6) Protected Aquifer Conditions - If a PWS chooses to verify protected aquifer conditions, it shall submit the following additional data to DDW for each of its ground-water sources for which the protected aquifer conditions apply. The report must state that the aquifer meets the definition of a protected aquifer based on the following information:

(a) thickness, depth, and lithology of the protective clay layer;

(b) data to indicate the lateral continuity of the protective clay layer over the extent of zone two. This may include such data as correlation of beds in multiple wells, published hydrogeologic studies, stratigraphic studies, potentiometric surface studies, and so forth; and

(c) evidence that the well has been grouted or otherwise sealed from the ground surface to a depth of at least 100 feet and for a thickness of at least 30 feet through the protective clay layer in accordance with R309-113-6(1)(v) R309-204-6(6)(i).

R309-113-10. Potential Contamination Source Inventory and Identification and Assessment of Controls.

(1) Prioritized Inventory of Potential Contamination Sources - Each PWS shall list all potential contamination sources within each DWSP zone or management area in priority order and state the basis for this order. This priority ranking shall be according to relative risk to the drinking water source. The name and address of each commercial and industrial potential contamination source is required. Additional information should include the name and phone number of a contact person and a list of the chemical, biological, and/or radiological hazards associated with each potential contamination source. Additionally, each PWS shall identify each potential contamination source as to its location in zone one, two, three, four or in a management area and plot it on the map required in R309-113-9(5)(a)(viii) or R309-113-9(5)(b)(i).

(a) List of Potential Contamination Sources - A List of Potential Contamination Sources is found in the "Source Protection User's Guide." This document may be obtained from

DDW. This list may be used by PWSs as a guide to inventorying potential contamination sources within their DWSP zones and management areas.

(b) Refining, Expanding, Updating, and Verifying Potential Contamination Sources - Each PWS shall update its list of potential contamination sources to show current conditions within DWSP zones or management areas. This includes adding potential contamination sources which have moved into DWSP zones or management areas, deleting potential contamination sources which have moved out, improving available data about potential contamination sources, and all other appropriate refinements.

(2) Identification and Assessment of Current Controls - PWSs are not required to plan and implement land management strategies for potential contamination source hazards that are assessed as "adequately controlled." If controls are not identified, the potential contamination source will be considered to be "not adequately controlled." Additionally, if the hazards at a potential contamination source cannot be identified, the potential contamination source must be assessed as "not adequately controlled." Identification and assessment should be limited to one of the following controls for each applicable hazard: regulatory, best management/pollution prevention, physical, and negligible quantity controls. Each of the following topics for a control must be addressed before identification and assessment will be considered to be complete. Refer to the "Source Protection User's Guide" for a list of government agencies and the programs they administer to control potential contamination sources. This guide may be obtained from DDW.

(a) Regulatory Controls - Identify the enforcement agency and verify that the hazard is being regulated by them; cite and/or quote applicable references in the regulation, rule or ordinance which pertain to controlling the hazard; explain how the regulatory control prevents ground-water contamination; assess the hazard; and set a date to reassess the hazard.

(b) Best Management/Pollution Prevention Practice Controls - List the specific best management/pollution prevention practices which have been implemented by potential contamination source management to control the hazard and indicate that they are willing to continue the use of these practices; explain how these practices prevent ground-water contamination; assess the hazard; and set a date to reassess the hazard.

(c) Physical Controls - Describe the physical control(s) which have been constructed to control the hazard; explain how these controls prevent contamination; assess the hazard; and set a date to reassess the hazard.

(d) Negligible Quantity Control - Identify the quantity of the hazard that is being used, disposed, stored, manufactured, and/or transported; explain why this amount should be considered a negligible quantity; assess the hazard; and set a date to reassess the hazard.

(3) For the purpose of meeting the requirements of R309-113, DDW will consider a PWS's assessment that a potential contamination source which is covered by a permit or approval under one of the regulatory programs listed below sufficient to demonstrate that the source is adequately controlled unless otherwise determined by the Executive Secretary. For all other state programs, the PWS's assessment is subject to review by DDW; as a result, a PWS's DWSP Plan may be disapproved if DDW does not concur with its assessment(s).

(a) The Utah Ground-Water Quality Protection program established by Section 19-5-104 and R317-6;

(b) closure plans or Part B permits under authority of the Resource Conservation and Recovery Act (RCRA) of 1984 regarding the monitoring and treatment of ground water;

(c) the Utah Pollutant Discharge Elimination System (UPDES) established by Section 19-5-104 and R317-8;

(d) the Underground Storage Tank Program established by Section 19-6-403 and R311-200 through R311-208; and

(e) the Underground Injection Control (UIC) Program for classes I-IV established by Sections 19-5-104 and 40-6-5 and R317-7 and R649-5.

R309-113-11. Management Program to Control Each Preexisting Potential Contamination Source.

(1) PWSs shall plan land management strategies to control each preexisting potential contamination source in accordance with their authority and jurisdiction. Land management strategies must be consistent with the provisions of R309-113, designed to control potential contamination, and may be regulatory or non-regulatory. Each potential contamination source listed on the inventory required in R309-113-10(1) and assessed as "not adequately controlled" must be addressed. Land management strategies must be implemented according to the schedule required in R309-113-7(1)(e).

(2) PWSs with overlapping protection zones and management areas may cooperate in controlling a particular preexisting potential contamination source if one PWS will agree to take the lead in planning and implementing land management strategies and the remaining PWS(s) will assess the preexisting potential contamination source as "adequately controlled."

R309-113-12. Management Program to Control or Prohibit Future Potential Contamination Sources for Existing Drinking Water Sources.

(1) PWSs shall plan land management strategies to control or prohibit future potential contamination sources within each of its DWSP zones or management areas consistent with the provisions of R309-113 and to an extent allowed under its authority and jurisdiction. Land management strategies must be designed to control potential contamination and may be regulatory or non-regulatory. Additionally land management strategies must be implemented according to the schedule required in R309-113-7(1)(e).

(2) Protection areas may extend into neighboring cities, towns, and counties. Since it may not be possible for some PWSs to enact regulatory land management strategies outside of their jurisdiction, except as described below, it is recommended that these PWSs contact their neighboring cities, towns, and counties to see if they are willing to implement protective ordinances to prevent ground-water contamination under joint management agreements.

(3) Cities and towns have extraterritorial jurisdiction in accordance with Section 10-8-15 of the Utah Code Annotated to enact ordinances to protect a stream or "source" from which

their water is taken... "for 15 miles above the point from which it is taken and for a distance of 300 feet on each side of such stream..." Section 10-8-15 includes ground-water sources.

(4) Zoning ordinances are an effective means to control potential contamination sources that may want to move into protection areas. They allow PWSs to prohibit facilities that would discharge contaminants directly to ground water. They also allow PWSs to review plans from potential contamination sources to ensure there will be adequate spill protection and waste disposal procedures, etc. If zoning ordinances are not used, PWSs must establish a plan to contact potential contamination sources individually as they move into protection areas, identify and assess their controls, and plan land management strategies if they are not adequately controlled.

R309-113-13. New Ground-water Sources of Drinking Water.

(1) Prior to constructing a new ground-water source of drinking water, each PWS shall develop a PER which demonstrates whether the source meets the requirements of this section and submit it to DDW. Additionally, engineering information in accordance with R309-204-6(5)(a) or R309-204-7(4) must be submitted to DDW. DDW will not grant plan approval until both source protection and engineering requirements are met. Construction standards relating to protection zones and management areas (fencing, diversion channels, sewer line construction, and grouting, etc.) are found in R309-204. After the source is constructed a DWSP Plan must be developed, submitted, and implemented accordingly.

(2) Preliminary Evaluation Report for New Sources of Drinking Water - PERs shall cover all four zones or the entire management area. PERs should be developed in accordance with the "Standard Report Format for New Wells and Springs." This document may be obtained from DDW. PWSs shall include the following four sections in each PER:

(a) Delineation Report for Estimated DWSP Zones - The same requirements apply as in R309-113-9(5), except that the hydrogeologic data for the PER must be developed using the best available data which may be obtained from: surrounding wells, published information, or surface geologic mapping. PWSs must use the Preferred Delineation Procedure to delineate protection zones for new wells.

(b) Inventory of Potential Contamination Sources and Identification and Assessment of Controls - The same requirements apply as in R309-113-10(1) and (2). Additionally, the PER must demonstrate that the source meets the following requirements:

(i) Protection Areas Delineated using the Preferred Delineation Procedure in Protected Aquifers - A PWS shall not locate a new ground-water source of drinking water where an uncontrolled potential contamination source or a pollution source exists within zone one.

(ii) Protection Areas Delineated using the Preferred Delineation Procedure in Unprotected Aquifers - A PWS shall not locate a new ground-water source of drinking water where an uncontrolled potential contamination source or an uncontrolled pollution source exists within zone one. Additionally, a new ground-water source of drinking water may not be located where a pollution source exists within zone two unless the pollution source implements design standards which prevent contaminated discharges to ground water.

(iii) Management Areas Delineated using the Optional Two-Mile Radius Delineation Procedure - A PWS shall not locate a new spring where an uncontrolled potential contamination source or a pollution source exists within zone one. Additionally, a new spring may not be located where a pollution source exist within the management area unless: a hydrogeologic report in accordance with R309-113-9(5)(b)(ii) which verifies that it does not impact the spring; or the pollution source implements design standards which prevent contaminated discharges to ground water.

(c) Land Ownership Map - A land ownership map which includes all land within zones one and two or the entire management area. Additionally, include a list which exclusively identifies the land owners in zones one and two or the management area, the parcel(s) of land which they own, and the zone in which they own land. A land ownership map and list are not required if ordinances are used to protect these areas.

(d) Land Use Agreements, Letters of Intent, or Zoning Ordinances - Land use agreements which meet the requirements of the definition in R309-113-6(1)(n). Zoning ordinances which are already in effect or letters of intent may be substituted for land use agreements; however, they must accomplish the same level of protection that is required in a land use agreement. Letters of intent must be notarized, include the same language that is required in land use agreements, and contain the statement that "the owner agrees to record the land use agreement in the county recorder's office, if the source proves to be an acceptable drinking water source." The PWS shall not introduce a new source into its system until copies of all applicable recorded land use agreements are submitted to DDW.

(3) Sewers Within DWSP Zones and Management Areas - Sewer lines may not be located within zones one and two or a management area unless the criteria identified below are met. If sewer lines are located or planned to be located within zones one and two or a management area, the PER must demonstrate that they comply with this criteria. Sewer lines that comply with this criteria may be assessed as adequately controlled potential contamination sources.

(a) Zone One - If the conditions specified in R309-113-13(3)(a)(i and ii) below are met, all sewer lines within zone one shall be constructed in accordance with R309-204-6(4) and must be at least 10 feet from the wellhead.

(i) There is at least 5 feet of suitable soil between the bottom of the sewer lines and the top of the maximum seasonal ground-water table or perched water table. (Suitable soils contain adequate sand/silt/clay to act as an effective effluent filter within its depth for the removal of pathogenic organisms and fill the voids between coarse particles such as gravel, cobbles, and angular rock fragments); and

(ii) there is at least 5 feet of suitable soil between the bottom of the sewer lines the top of any bedrock formations. (For the purposes of this rule, unsuitable soils or bedrock formations shall include soil or bedrock formations which have such low permeability that they prevent downward passage of effluent, or soil or bedrock formations with open joints or solution channels which permit such rapid flow that effluent is not renovated. This includes coarse particles such as gravel,

cobbles, or angular rock fragments with insufficient soil to fill the voids between the particles. Solid or fractured bedrock such as shale, sandstone, limestone, basalt, or granite are unacceptable.)

(b) Zones One and Two - If the conditions identified in R309-113-13(3)(a)(i and ii) above cannot be met, any sewer lines with zones one and two or a management area shall be constructed in accordance with R309-204-6(4) and must be at least 300 feet from the wellhead or margin of the collection area.

(4) Use waivers for the VOC and pesticide parameter groups may be issued if the inventory of potential contamination sources indicates that the chemicals within these parameter groups are not used, disposed, stored, transported, or manufactured within zones one, two, and three or the management area.

(5) Replacement Wells - A PER is not required for proposed wells, if the PWS receives written notification from DDW that the well is classified as a replacement well. The PWS must submit a letter requesting that the well be classified as a replacement well and include documentation to show that the conditions required in R309-113-6(1)(w) are met. If a proposed well is classified as a replacement well, the PWS is still required to submit and obtain written approval for all other information as required in:

(a) DWSP Plan for New Sources of Drinking Water (refer to R309-113-13(6), and

(b) the Outline of Well Approval Process (refer to R309-204-6(5)).

(6) DWSP Plan for New Sources of Drinking Water - The PWS shall submit a DWSP Plan in accordance with R309-113-7(1) for any new ground-water source of drinking water within one year after the date of DDW's concurrence letter. In developing this DWSP Plan, PWSs shall refine the information in the PER by applying any new, as-constructed characteristics of the source (i.e., pumping rate, aquifer test, etc.).

R309-113-14. Contingency Plans.

PWSs shall submit a Contingency Plan which includes all sources of drinking water for their entire water system to DDW concurrently with the submission of their first DWSP Plan. Guidance for developing Contingency Plans may be found in the "Source Protection User's Guide." This document may be obtained from DDW.

R309-113-15. Monitoring Reduction Waivers.

(1) Three types of monitoring waivers are available to PWSs. They are: a) reliably and consistently, b) use, and c) susceptibility. The criteria for establishing a reliably and consistently waiver is set forth in R309-104. The criteria for use and susceptibility waivers follows.

(2) If a source's DWSP plan is due according to the schedule in R309-113-3, and is not submitted to DDW, its use and susceptibility waivers for the VOC and pesticide parameter groups (refer to R309-104-4.3.1 e and f; and R309-104-4.3.2 h and i) will expire unless an exception (refer to R309-113-4) for a new due date has been granted. Additionally, current use and susceptibility waivers for the VOC, pesticide and unregulated parameter groups will expire upon review of a DWSP plan, if these waivers are not addressed in the plan.

(3) Use Waivers - If the chemicals within the VOC and/or pesticide parameter group(s) (refer to R309-103 table 103-3 and 103-2) have not been used within the past five years within zones one, two, and three, the source may be eligible for a use waiver. To qualify for a VOC and/or pesticide use waiver, a PWS must complete the following two steps:

(a) List the chemicals which are used, disposed, stored, transported, and manufactured at each potential contamination source within zones one, two, and three where the use of the chemicals within the VOC and pesticide parameter groups are likely; and

(b) submit a dated statement which is signed by the system's designated person that none of the VOCs and pesticides within these respective parameter groups have been used, disposed, stored, transported, or manufactured within the past five years within zones one, two, and three.

(4) Susceptibility Waivers - If a source does not qualify for use waivers, and if reliably and consistently waivers have not been issued, it may be eligible for susceptibility waivers. Susceptibility waivers tolerate the use, disposal, storage, transport, and manufacture of chemicals within zones one, two, and three as long as the PWS can demonstrate that the source is not susceptible to contamination from them. To qualify for a VOC and/or pesticide susceptibility waiver, a PWS must complete the following steps:

(a) Submit the monitoring results of at least one applicable sample from the VOC and/or pesticide parameter group(s) that has been taken within the past five years. A non-detectable analysis for each chemical within the parameter group(s) is required;

(b) submit a dated statement from the designated person verifying that the PWS is confident that a susceptibility waiver for the VOC and/or pesticide parameter group(s) will not threaten public health; and

(c) verify that the source is developed in a protected aquifer, as defined in R309-113-6(1)(v), and have a public education program which addresses proper use and disposal practices for pesticides and VOCs which is described in the management sections of the DWSP plan.

(5) Special Waiver Conditions - Special scientific or engineering studies or best management practices may be developed to support a request for an exception to paragraph R309-113-15(4)(c) due to special conditions. These studies must be approved by DDW before the PWS begins the study. Special waiver condition studies may include:

(a) geology and construction/grout seal of the well to demonstrate geologic protection;

(b) memoranda of agreement which addresses best management practices for VOCs and/or pesticides with industrial, agricultural, and commercial facilities which use, store, transport, manufacture, or dispose of the chemicals within these parameter groups;

(c) public education programs which address best management practices for VOCs and/or pesticides;

(d) contaminant quantities;

(e) affected land area; and/or

(f) fate and transport studies of the VOCs and/or pesticides which are listed as hazards at the PCSs within zones one, two, and three, and any other conditions which may be identified by

the PWS and approved by DDW.

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R313. Environmental Quality, Radiation Control.

R313-16. General Requirements Applicable to the Installation, Registration, Inspection, and Use of Radiation Machines.

R313-16-200. Purpose and Authority.

(1) The purpose of this rule is to prescribe requirements governing the installation, registration, inspection, and use of sources of electronically produced ionizing radiation.

(2) The rules set forth herein are adopted pursuant to the provisions of Section 19-3-104(3).

R313-16-215. Definitions.

"Facility" means the location, building, vehicle, or complex under one administrative control, at which one or more radiation machines are installed, located or used.

"Sorting Center" means a facility in which radiation machines are in storage until they are shipped out of state.

"Storage" means a condition in which a radiation machine is not being used for an extended period of time, and has been made inoperable.

R313-16-220. Exemptions.

(1) Electronic equipment that produces radiation incidental to its operation for other purposes is exempt from the registration and notification requirements of Rule R313-16, providing the dose equivalent rate averaged over an area of ten square centimeters does not exceed 0.5 mrem (5.0 uSv) per hour at five centimeters from accessible surfaces of the equipment.

(2) Radiation machines while in transit are exempt from the requirements of Section R313-16-230. See Section R313-16-250 for other applicable requirements.

(3) Television receivers are exempt from the requirements of Rule R313-16.

(4) Radiation machines while in the possession of a manufacturer, assembler, or a sorting center are exempt from the requirements of Section R313-16-230.

(5) Radiation machines owned by an agency of the Federal Government are exempt from the requirements of Rule R313-16.

R313-16-225. Responsibility for Radiation Safety Program.

(1) The registrant shall be ultimately responsible for radiation safety, but may designate another person to implement the radiation safety program. When, in the Executive Secretary's opinion, neither the registrant nor the registrant's designee is sufficiently qualified to insure safe use of the machine; the Executive Secretary may order the registrant to designate another individual who has adequate qualifications.

(2) The registrant or the registrant's designee shall:

(a) develop a detailed program of radiation safety that assures compliance with the applicable requirements of these rules, including Section R313-15-101;

(b) have instructions given concerning radiation hazards and radiation safety practices to individuals who may be occupationally exposed;

(c) have surveys made and other procedures carried out as required by these rules; and

(d) keep a copy of all reports, records, and written policies and procedures required by these rules.

R313-16-230. Registration of Radiation Machines.

(1) Ionizing radiation producing machines not exempted by Section R313-16-220 shall be registered with the Department.

(2) Registration renewal shall be required annually. The registration interval is July 1 through June 30 of the following year. The annual registration anniversary date shall be July 1. Renewal application will be considered late and late fees may be assessed if not received by the last day of August.

(3) Registration for the facility is achieved when the Executive Secretary receives the following:

(a) a current and complete application form DRC-10 for registration of radiation machines; and

(b) annual registration fees.

(4) Registration for the current fiscal year shall be acknowledged by the Executive Secretary through receipts for the remittance of the registration fee.

R313-16-231. Additional Requirements for the Issuance of a Registration for Particle Accelerators Excluding Therapeutic Radiation Machines (See Rule R313-30).

(1) In addition to the requirements of Section R313-16-230, a registrant who proposes to use a particle accelerator shall submit an application to the Executive Secretary containing the following:

(a) information demonstrating that the applicant, by reason of training and experience, is qualified to use the accelerator in question for the purpose requested in a manner that will minimize danger to public health and safety or the environment;

(b) a discussion which demonstrates that the applicant's equipment, facilities, and operating and emergency procedures are adequate to protect health and minimize danger to public health and safety or the environment;

(c) the name and qualifications of the individual, appointed by the applicant, to serve as radiation safety officer pursuant to Section R313-35-140;

(d) a description of the applicant's or the staff's experience in the use of particle accelerators and radiation safety training; and

(e) a description of the radiation safety training the applicant will provide to particle accelerator operators.

(2) Registrants who possess and use a particle accelerator that has been registered with the Department prior to January 1, 1999 shall submit a registration application that contains the information in R313-16-231(1)(a) through (e). The application shall be submitted by July 1, 1999.

R313-16-233. Notification of Intent to Provide Servicing and Services.

(1) Persons engaged in the business of installing or offering to install radiation machines or engaged in the business of furnishing or offering to furnish radiation machine servicing or services in this State shall notify the Executive Secretary of the intent to provide these services within 30 days following the effective date of this rule or, thereafter, prior to furnishing or offering to furnish these services.

(2) The notification shall specify:

(a) that the applicable requirements of these rules have been read and understood;

(b) the services which will be provided;

(c) the training and experience that qualify for the discharge of the services; and

(d) the type of measurement instrument to be used, frequency of calibration, and source of calibration.

(3) For the purpose of Section R313-16-231, services may include but shall not be limited to:

(a) installation or servicing of radiation machines and associated radiation machine components;

(b) calibration of radiation machines or radiation measurement instruments or devices; and

(c) consultations or surveys for radiation protection or health physics (See Section R313-16-400).

(4) Individuals shall not perform the services listed in Subsection R313-16-233(3) unless they are specifically stated for that individual on the notification of intent required in Subsection R313-16-233(1) and the complete information required by Subsection R313-2616-233(2) has been received by the Executive Secretary.

R313-16-235. Designation of Registrant.

The owner or lessee of a radiation machine is the registrant unless responsibility is transferred to another person who acknowledges this in writing to the Executive Secretary. The registrant shall be responsible for penalties imposed under the Executive Secretary's escalated enforcement authority, see Rule R313-14.

R313-16-240. Reciprocal Recognition of Registration or License.

Radiation machines from jurisdictions other than the State of Utah may be operated in this state for a period of less than 30 days providing that the requirements of Section R313-16-280 have been met and providing they are properly registered or licensed with the State Agency having jurisdiction over the office directing the activities of the individuals operating the radiation machines. Radiation machines operating under reciprocity may be inspected pursuant to Section R313-16-290.

R313-16-250. Report of Changes.

The registrant shall send written notification within 14 working days to the Executive Secretary when:

(1) there are changes in location or ownership of a radiation machine;

(2) radiation machines are retired from service;

(3) radiation machines are put in storage or returned to service from storage; or

(4) modifications in facility or equipment are made that might reasonably be expected to effect compliance under the terms of these rules.

R313-16-260. Approval Not Implied.

Registration does not constitute approval of activities performed under the registration and no person shall state or imply that activities under the registration have been approved by the Executive Secretary.

R313-16-270. Transferor, Assembler, or Installer Obligation.

(1) Persons who sell, lease, transfer, lend, dispose, assemble, or install a radiation machine in this state shall notify the Executive Secretary within 14 working days of the following:

(a) the name and address of the person who received the machine and also the name and address of the new registrant of the machine if not the same;

(b) the manufacturer, model, and serial number of the master control of the radiation machine and the number of x-ray tubes transferred; and

(c) the date of transfer of the radiation machine.

(2) Radiation machine equipment or accessories shall not be installed if the equipment will not meet the requirements of these rules when installation is completed.

(3) Reporting Compliance. Assemblers who install one or more components into a radiation machine system or subsystem, shall certify that the equipment meets the standards of these rules. A copy of this certification shall be transmitted to the purchaser and to the Executive Secretary within 14 working days following the completion of the installation.

(4) Certification can be accomplished by providing the following in conjunction with the information required by Section R313-16-250 and Subsection R313-16-270(1):

(a) the full name and address of the assembler and the date of assembly or installation;

(b) a statement as to whether the equipment is a replacement for other equipment, in addition to other equipment, or new equipment in a new facility;

(c) an affirmation that the applicable rules have been met;

(d) a statement of the type and intended use of the radiation machine system or subsystem, for example "radiographic-stationary general purpose x-ray;"

(e) a list of the components which were assembled or installed into the radiation machine system or subsystem, identifying the components by type, manufacturer, model number, and serial number;

(f) a list of the equipment or components which were replaced, identifying the components by type, manufacturer, model number, and serial number, and a statement as to their intended disposal or use;

(g) the reports or inspection results of the qualified expert utilized.

R313-16-275. Obligation of Equipment Registrant or Recipient of New Equipment.

The registrant of a radiation machine shall not allow the equipment to be put into operation until it has been determined that the facility in which it is installed meets the shielding and design requirements of Rule R313-28; see Sections R313-28-32, R313-28-200 and R313-28-450.

R313-16-280. Out-of-State Radiation Machines.

(1) Whenever a radiation machine is to be brought into the state, for either temporary or extended use, the person proposing to bring the machine into the state shall give written notice to the Executive Secretary at least three working days before the machine is to be used in the state. The notice shall include the type of radiation machine; the manufacturer model and serial number of the master control; the nature, duration, and scope of

use; and the exact location where the radiation machine is to be used. If, for a specific case, the three working-day period would impose an undue hardship, the person may, upon application to the Executive Secretary, obtain permission to proceed sooner.

(2) In addition the out-of-state person shall:

(a) comply with the applicable portions of these rules;

(b) supply the Executive Secretary other information as the Executive Secretary requests.

R313-16-290. Inspection of Radiation Machines and Facilities.

(1) Registrants shall assure that radiation machines registered pursuant to R313-16-230 are compliant with these rules. Radiation machines, facilities, and radiation safety programs are subject to inspection to assure compliance with these rules, to assist in improving radiographic imaging and to assist in lowering radiation exposure to as low as reasonably achievable levels, see R313-15-101. During an inspection of a facility, representatives of the Executive Secretary may, as a part of the inspection, accept work, performed by a person who meets the qualifications in R313-16-400, that demonstrates compliance with these rules.

(2) Inspections may, at the Executive Secretary's discretion, be done after the installation of equipment, or after a change in the facility or equipment which might cause a significant change in radiation output or hazards. Inspections may be completed in accordance with the schedule as defined in Table I.

TABLE I

FACILITY TYPE	MAXIMUM TIME BETWEEN INSPECTIONS
Hospital or Radiation Therapy Facility	one year
Medical Facility using Fluoroscopic or Computed Tomography (CT) Units	one year
Medical Facility Using General Radiographic Devices	two years
Chiropractic	two years
Dental	five years
Podiatry	five years
Veterinary	five years
Industrial Facility with High or Very High Radiation Areas Accessible to Individuals	one year
Industrial Facility Using Cabinet X-Ray Units or Units Designed for Other Industrial Purposes	five years
Other	one to five years

(3) The registrant, in a timely manner, shall pay the appropriate inspection fee after completion of the inspection.

(4) Ionizing radiation producing machines which have been officially placed in storage are exempt from inspection fees but are subject to visual verification of their status by representatives of the Executive Secretary.

R313-16-400. Qualifications an Individual May Have to Perform Radiation Safety Inspections for a Registrant.

The following are representative, but not exclusive, lists of the qualifications of those individuals who may have sufficient experience or training to perform radiation safety inspections for a registrant. These individuals shall submit a statement of their training and experience to the Executive Secretary.

(1) Radiation therapy:

(a) Certified by the American Board of Radiology (A.B.R.) in radiation therapy;

(b) Certified by the American Board of Medical Physics in radiation therapy;

(c) Ph.D. plus two years of clinical therapy experience;

(d) M.S. plus three years of clinical therapy experience; or

(e) B.S. plus five years of clinical therapy experience.

(2) Radiation therapy safety and leakage survey only:

(a) Certified by the American Board of Health Physics (A.B.H.P.);or

(b) Eligible for admission to A.B.H.P. certification test.

(3) Diagnostic x-ray:

(a) Certified by the A.B.R. certification in diagnostic radiology (physics);

(b) Certified by the American Board of Medical Physics in radiation therapy;

(c) A.B.H.P. comprehensive certification;

(d) Ph.D. plus one year clinical experience or two years general experience;

(e) M.S. plus one year clinical experience or two years general experience;

(f) B.S. plus two years clinical experience or four years general experience;

(g) Eligible for admission to A.B.R. certification test, M.S. plus two years experience; or

(h) Eligible for admission to A.B.H.P. certification test:

(i) B.S. plus five years health physics, preferably in diagnostic x-ray surveys experience;

(ii) M.S. in physical sciences plus four years health physics, preferably in diagnostic x-ray surveys experience;

(iii) M.S. in health physics or medical physics plus 3-1/2 years health physics, preferably in diagnostic x-ray surveys experience;

(iv) Ph.D. in physical sciences plus 3-1/2 years health physics, preferably in diagnostic x-ray surveys experience; or

(v) Ph.D. in health physics or medical physics plus three years health physics, preferably in diagnostic x-ray surveys experience.

KEY: x-ray, inspection
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R313. Environmental Quality, Radiation Control.
R313-21. General Licenses.
R313-21-1. Purpose and Scope.

(1) R313-21 establishes general licenses for the possession and use of radioactive material contained in certain items and a general license for ownership of radioactive material.

(2) The rules set forth herein are adopted pursuant to the provisions of Sections 19-3-104(3)and 19-3-104(6).

R313-21-21. General Licenses--Source Material.

(1) A general license is hereby issued authorizing commercial and industrial firms, research, educational and medical institutions, and state and local government agencies to use and transfer not more than 15 pounds (6.82 kg) of source material at any one time for research, development, educational, commercial, or operational purposes. A person authorized to use or transfer source material, pursuant to this general license, may not receive more than a total of 150 pounds (68.2 kg) of source material in any one calendar year.

(2) Persons who receive, possess, use, or transfer source material pursuant to the general license issued in R313-21-21(1) are exempt from the provisions of R313-15 and R313-18, to the extent that such receipt, possession, use or transfer is within the terms of the general license; provided, however, that this exemption shall not be deemed to apply to a person who is also in possession of source material under a specific license issued pursuant to R313-22.

(3) Persons who receive, possess, use, or transfer source material pursuant to the general license in R313-21-21(1) are prohibited from administering source material, or the radiation therefrom, either externally or internally, to human beings except as may be authorized by the Executive Secretary in a specific license.

(4) A general license is hereby issued authorizing the receipt of title to source material without regard to quantity. This general license does not authorize a person to receive, possess, use, or transfer source material.

(5) Depleted uranium in industrial products and devices.

(a) A general license is hereby issued to receive, acquire, possess, use, or transfer, in accordance with the provisions of R313-21-21(5)(b), (c), (d), and (e), depleted uranium contained in industrial products or devices for the purpose of providing a concentrated mass in a small volume of the product or device.

(b) The general license in R313-21-21(5)(a) applies only to industrial products or devices which have been manufactured either in accordance with a specific license issued to the manufacturer of the products or devices pursuant to R313-22-75(12) or in accordance with a specific license issued to the manufacturer by a Licensing State, the Nuclear Regulatory Commission or an Agreement State which authorizes manufacture of the products or devices for distribution to persons generally licensed by the Nuclear Regulatory Commission or an Agreement State.

(c)(i) Persons who receive, acquire, possess, or use depleted uranium pursuant to the general license established by R313-21-21(5)(a) shall file form DRC-12 "Registration Form-Use of Depleted Uranium Under General License," with the Executive Secretary. The form shall be submitted within 30 days after the first receipt or acquisition of depleted uranium. The registrant shall furnish on form DRC-12 the following information and other information as may be required by that form:

(A) name and address of the registrant;

(B) a statement that the registrant has developed and will maintain procedures designed to establish physical control over the depleted uranium described in R313-21-21(5)(a) and designed to prevent transfer of such depleted uranium in any form, including metal scrap, to persons not authorized to receive the depleted uranium; and

(C) name or title, address, and telephone number of the individual duly authorized to act for and on behalf of the registrant in supervising the procedures identified in R313-21-21(5)(c)(i)(B).

(ii) The registrant possessing or using depleted uranium under the general license established by R313-21-21(5)(a) shall report in writing to the Executive Secretary any changes in information previously furnished on the "Registration Form - Use of Depleted Uranium Under General License." The report shall be submitted within 30 days after the effective date of the change.

(d) A person who receives, acquires, possesses, or uses depleted uranium pursuant to the general license established by R313-21-21(5)(a):

(i) shall not introduce depleted uranium, in any form, into a chemical, physical, or metallurgical treatment or process, except a treatment or process for repair or restoration of any plating or other covering of the depleted uranium;

(ii) shall not abandon depleted uranium;

(iii) shall transfer or dispose of depleted uranium only by transfer in accordance with the provisions of R313-19-41. In the case where the transferee receives the depleted uranium pursuant to the general license established by R313-21-21(5)(a), the transferor shall furnish the transferee a copy of this rule and a copy of form DRC-12. In the case where the transferee receives the depleted uranium pursuant to a general license contained in the Nuclear Regulatory Commission's or Agreement State's regulation equivalent to R313-21-21(5)(a), the transferor shall furnish the transferee a copy of this rule and a copy of form DRC-12 accompanied by a note explaining that use of the product or device is regulated by the Nuclear Regulatory Commission or Agreement State under requirements substantially the same as those in this rule;

(iv) within 30 days of any transfer, shall report in writing to the Executive Secretary the name and address of the person receiving the depleted uranium pursuant to the transfer;

(v) shall not export depleted uranium except in accordance with a license issued by the Nuclear Regulatory Commission pursuant to 10 CFR Part 110; and

(vi) shall pay annual fees pursuant to R313-70.

(e) Any person receiving, acquiring, possessing, using, or transferring depleted uranium pursuant to the general license established by R313-21-21(5)(a) is exempt from the requirements of R313-15 and R313-18 of these rules with respect to the depleted uranium covered by that general license.

R313-21-22. General Licenses*--Radioactive Material Other Than Source Material.

NOTE: *Different general licenses are issued in this

section, each of which has its own specific conditions and requirements.

(1) Certain devices and equipment. A general license is hereby issued to transfer, receive, acquire, own, possess, and use radioactive material incorporated in the following devices or equipment which have been manufactured, tested and labeled by the manufacturer in accordance with the specific license issued to the manufacturer by the Nuclear Regulatory Commission for use pursuant to 10 CFR 31.3. This general license is subject to the provisions of R313-12-51 through R313-12-70, R313-15, R313-18 and R313-19 of these rules.

(a) Static Elimination Devices. Devices designed for use as static eliminators which contain, as a sealed source or sources, radioactive material consisting of a total of not more than 500 microcuries (18.5 MBq) of polonium-210 per device.

(b) Ion Generating Tube. Devices designed for ionization of air which contain, as a sealed source or sources, radioactive material consisting of a total of not more than 500 microcuries (18.5 MBq) of polonium-210 per device or a total of not more than 50 millicuries (1.85 GBq) of hydrogen-3 (tritium) per device.

(2) RESERVED.

(3) RESERVED.

(4) Certain measuring, gauging or controlling devices.

(a) A general license is hereby issued to commercial and industrial firms and research, educational and medical institutions, individuals in the conduct of their business, and state or local government agencies to own, acquire, receive, possess, use or transfer, in accordance with the provisions of R313-21-22(4)(b), (c) and (d), radioactive material excluding special nuclear material, contained in devices designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition, or for producing light or an ionized atmosphere.

(b) The general license in R313-21-22(4)(a) applies only to radioactive material contained in devices which have been manufactured and labeled in accordance with the specifications contained in a specific license issued by the Executive Secretary pursuant to R313-22-75 (4) or in accordance with specific license issued by the Nuclear Regulatory Commission, an Agreement State or a Licensing State, which authorizes distribution of devices to persons generally licensed by the Nuclear Regulatory Commission, an Agreement State or Licensing State.*

NOTE: *Regulations under the Federal Food, Drug, and Cosmetic Act authorizing the use of radioactive control devices in food production require certain additional labeling thereon which is found in 21 CFR 179.21.

(c) Any person who owns, acquires, receives, possesses, uses or transfers radioactive material in a device pursuant to the general license in R313-21-22(4)(a):

(i) shall register all devices by submitting form DRC-13, "Registration Form - Radioactive Material in Certain Measuring, Gauging or Controlling Devices Under General License," to the Executive Secretary within 30 days after the first receipt or acquisition of a device, however:

(A) devices containing no more than ten millicuries of polonium-210 and used for producing an ionized atmosphere need not be registered; and

(B) devices containing hydrogen-3 (tritium) and used for producing light need not be registered;

(ii) shall furnish on form DRC-13 the following information and other information as may be required by that form:

(A) name and address of the registrant;

(B) a statement that the registrant has developed and will maintain procedures designed to establish physical control over the device described in R313-21-22(4)(a) and designed to prevent transfer of the device other than to a specific licensee authorized to receive it or to another general licensees only as authorized by R313-21-22(4)(c)(xii); and

(C) name or title, address, and telephone number of the individual duly authorized to act for and on behalf of the registrant in supervising and maintaining the procedures identified in R313-21-22(4)(c)(ii)(B);

(iii) shall report in writing to the Executive Secretary any changes in information previously furnished on form DRC-13. The information shall be submitted within 30 days after the effective date of a change;

(iv) other than those persons using less than ten millicuries polonium-210 or hydrogen-3 (tritium) for producing light or an ionized atmosphere, shall submit the appropriate fee as required by R313-70-7(11) within 30 days after the first receipt or acquisition of the device.

(v) shall assure that all labels affixed to the device at the time of receipt, and bearing a statement that removal of the label is prohibited, are maintained thereon and shall comply with all instructions and precautions provided by the labels;

(vi) shall assure that the device is tested for leakage of radioactive material and proper operation of the on-off mechanism and indicator, if any, at no longer than six-month intervals or at other intervals as are specified in the label, however:

(A) devices containing only krypton need not be tested for leakage of radioactive material; and

(B) devices containing only tritium or not more than 100 microcuries (3.7 MBq) of other beta or gamma emitting material or 10 microcuries (0.37 MBq) of alpha emitting material and devices held in storage in the original shipping container prior to initial installation need not be tested;

(vii) shall assure that the tests required by R313-21-22(4)(c)(vi) and other testing, installation, servicing, and removal from installation involving the radioactive materials, its shielding or containment, are performed:

(A) in accordance with the instructions provided by the labels; or

(B) by a person holding a specific license from the Executive Secretary, a Licensing State, the Nuclear Regulatory Commission or an Agreement State which authorizes the activities in R313-21-22(4)(c)(vii);

(viii) shall maintain records showing compliance with the requirements of R313-21-22(4)(c)(vi) and (vii). The records shall show the results of tests. The records also shall show the dates of performance and the names of persons performing, testing, installing, servicing, and removal from installation concerning the radioactive material, its shielding or containment. Records of tests for leakage of radioactive

material required by R313-21-22(4)(c)(vi) shall be maintained for three years after the next required leak test is performed or the sealed source is transferred or disposed of. Records of tests of the on-off mechanism and indicator required by R313-21-22(4)(c)(vi) shall be maintained for three years after the next required test of the on-off mechanism and indicator is performed or until the sealed source is transferred or disposed of. Records which are required by R313-21-22(4)(c)(vii) shall be maintained for a period of two years from the date of the recorded event or until the device is transferred or disposed of;

(ix) upon the occurrence of a failure of or damage to, or any indication of a possible failure of or damage to, the shielding of the radioactive material or the on-off mechanism or indicator, or upon the detection of 0.005 microcurie (185 Bq) or more removable radioactive material, shall immediately suspend operation of the device until it has been repaired by the manufacturer or other person holding a specific license from the Executive Secretary, a Licensing State, the Nuclear Regulatory Commission, or an Agreement State to repair the devices, or disposed of by transfer to a person authorized by a specific license to receive the radioactive material contained in the device and, within 30 days, furnish to the Executive Secretary a report containing a brief description of the event and the remedial action taken;

(x) shall not abandon any device containing radioactive material;

(xi) except as provided in R313-21-22(4)(c)(xii), shall transfer or dispose of the device containing radioactive material only by transfer to a person holding a specific license of the Executive Secretary, the Nuclear Regulatory Commission, an Agreement State, or a Licensing State whose specific license authorizes the person to receive the device and within 30 days after transfer of a device to a specific licensee shall furnish to the Executive Secretary a report containing identification of the device by manufacturer's name and model number and the name and address of the person receiving the device. No report is required if the device is transferred to the specific licensee in order to obtain a replacement device;

(xii) shall transfer the device to another general licensee only:

(A) where the device remains in use at a particular location. In this case, the transferor shall give the transferee a copy of R313-21-22(4) and any safety documents identified in the label of the device and within 30 days of the transfer, report to the Executive Secretary the manufacturer's name and model number of device transferred, the name and address of the transferee, and the name or position of an individual who may constitute a point of contact between the Executive Secretary and the transferee; or

(B) where the device is held in storage in the original shipping container at its intended location of use prior to initial use by a general licensee;

(xiii) shall comply with the provisions of R313-15-1201 and R313-15-1202 for reporting radiation incidents, theft or loss of licensed material, but shall be exempt from the other requirements of R313-15 and R313-18; and

(xiv) shall pay annual fees pursuant to R313-70.

(d) The general license in R313-21-22(4)(a) does not authorize the manufactureof devices containing radioactive material.

(e) The general license provided in R313-21-22(4)(a) is subject to the provisions of R313-12-51 through R313-12-53, R313-12-70, R313-14, R313-19-34, R313-19-41, R313-19-61, and R313-19-100.

(5) Luminous safety devices for aircraft.

(a) A general license is hereby issued to own, receive, acquire, possess and use tritium or promethium-147 contained in luminous safety devices for use in aircraft, provided:

(i) each device contains not more than 10 curies (370.0 GBq) of tritium or 300 millicuries (11.1 GBq) of promethium-147; and

(ii) each device has been manufactured, assembled or imported in accordance with a specific license issued by the Nuclear Regulatory Commission, or each device has been manufactured or assembled in accordance with the specifications contained in a specific license issued by the Executive Secretary or an Agreement State to the manufacturer or assembler of the device pursuant to licensing requirements equivalent to those in 10 CFR 32.53.

(b) Persons who own, receive, acquire, possess or use luminous safety devices pursuant to the general license in R313-21-22(5) are exempt from the requirements of R313-15 and R313-18, except that they shall comply with the provisions of R313-15-1201 and R313-15-1202.

(c) This general license does not authorize the manufacture, assembly, or repair of luminous safety devices containing tritium or promethium-147.

(d) This general license does not authorize the ownership, receipt, acquisition, possession or use of promethium-147 contained in instrument dials.

(e) This general license is subject to the provisions of R313-12-51 through R313-12-70, R313-14, R313-19-34, R313-19-41, R313-19-61, and R313-19-100.

(6) Ownership of radioactive material. A general license is hereby issued to own radioactive material without regard to quantity. Notwithstanding any other provisions of R313-21, this general license does not authorize the manufacture, production, transfer, receipt, possession or use of radioactive material.

(7) Calibration and reference sources.

(a) A general license is hereby issued to those persons listed below to own, receive, acquire, possess, use and transfer, in accordance with the provisions of R313-21-22(7)(d) and (e), americium-241 in the form of calibration or reference sources:

(i) any person who holds a specific license issued by the Executive Secretary which authorizes that person to receive, possess, use and transfer radioactive material; and

(ii) any person who holds a specific license issued by the Nuclear Regulatory Commission which authorizes that person to receive, possess, use and transfer special nuclear material.

(b) A general license is hereby issued to own, receive, possess, use and transfer plutonium in the form of calibration or reference sources in accordance with the provisions of R313-21-22(7)(d) and (e) to a person who holds a specific license issued by the Executive Secretary which authorizes that person to receive, possess, use and transfer radioactive material.

(c) A general license is hereby issued to own, receive, possess, use and transfer radium-226 in the form of calibration

or reference sources in accordance with the provisions of R313-21-22(7)(d) and (e) to a person who holds a specific license issued by the Executive Secretary which authorizes that person to receive, possess, use and transfer radioactive material.

(d) The general licenses in R313-21-22(7)(a), (b) and (c) apply only to calibration or reference sources which have been manufactured in accordance with the specifications contained in a specific license issued to the manufacturer or importer of the sources by the Nuclear Regulatory Commission pursuant to 10 CFR 32.57 or 10 CFR 70.39 or which have been manufactured in accordance with the specifications contained in a specific license issued to the manufacturer by the Executive Secretary, a Licensing State, or an Agreement State pursuant to licensing requirements equivalent to those contained in 10 CFR 32.57 or 10 CFR 70.39.

(e) The general licenses provided in R313-21-22(7)(a), (b), and (c) are subject to the provisions of R313-12-51 through R313-12-53, R313-12-70, R313-14, R313-19-34, R313-19-41, R313-19-61, R313-19-100, R313-15 and R313-18. In addition, persons who own, receive, acquire, possess, use or transfer one or more calibration or reference sources pursuant to these general licenses:

(i) shall not possess at any one time, at any one location of storage or use, more than 5 microcuries (185.0 kBq) of americium-241, 5 microcuries (185.0 kBq) of plutonium, or 5 microcuries (185.0 kBq) of radium-226 in a source;

(ii) shall not receive, possess, use or transfer a source unless the source, or the storage container, bears a label which includes one of the following statements or a substantially similar statement which contains the information called for in one of the following statements, as appropriate:

(A) The receipt, possession, use and transfer of this source, Model No. ....., Serial No. ....., are subject to a general license and the regulations of the United States Nuclear Regulatory Commission or of a state with which the Commission has entered into an agreement for the exercise of regulatory authority. Do not remove this label.

CAUTION - RADIOACTIVE MATERIAL

THIS SOURCE CONTAINS (AMERICIUM-241)(PLUTONIUM)*

DO NOT TOUCH RADIOACTIVE PORTION OF THIS SOURCE.

.....

Typed or printed name of the manufacturer or importer

NOTE: *Show the name of the appropriate material.

(B) The receipt, possession, use and transfer of this source, Model No....., Serial No....., are subject to a general license and the regulations of a Licensing State. Do not remove this label.

CAUTION - RADIOACTIVE MATERIAL

THIS SOURCE CONTAINS RADIUM-226

DO NOT TOUCH RADIOACTIVE PORTION OF THIS SOURCE.

.....

Typed or printed name of the manufacturer or importer

(iii) shall not transfer, abandon, or dispose of a source except by transfer to a person authorized by a license from the Executive Secretary, a Licensing State, the Nuclear Regulatory Commission, or an Agreement State to receive the source;

(iv) shall store a source, except when the source is being used, in a closed container adequately designed and constructed to contain americium-241, plutonium, or radium-226 which might otherwise escape during storage; and

(v) shall not use a source for any purpose other than the calibration of radiation detectors or the standardization of other sources.

(f) These general licenses do not authorize the manufacture of calibration or reference sources containing americium-241, plutonium, or radium-226.

(8) RESERVED.

(9) General license for use of radioactive material for certain in vitro clinical or laboratory testing.*

NOTE: *The New Drug provisions of the Federal Food, Drug and Cosmetic Act also govern the availability and use of any specific diagnostic drug in interstate commerce.

(a) A general license is hereby issued to any physician, veterinarian, clinical laboratory or hospital to receive, acquire, possess, transfer or use, for the following stated tests, in accordance with the provisions of R313-21-22(9) (b), (c), (d), (e), and (f) the following radioactive materials in prepackaged units for use in in-vitro clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to human beings or animals:

(i) iodine-125, in units not exceeding 10 microcuries (370.0 kBq) each;

(ii) iodine-131, in units not exceeding 10 microcuries (370.0 kBq) each;

(iii) carbon-14, in units not exceeding 10 microcuries (370.0 kBq) each;

(iv) hydrogen-3 (tritium), in units not exceeding 50 microcuries (1.85 MBq) each;

(v) iron-59, in units not exceeding 20 microcuries (740.0 kBq) each;

(vi) cobalt-57, in units not exceeding 10 microcuries (370.0 kBq) each;

(vii) selenium-75, in units not to exceed 10 microcuries (370.0 kBq) each; or

(viii) mock iodine-125, reference or calibration sources, in units not exceeding 0.05 microcurie (1.85 kBq) of iodine-129 and 0.005 microcurie (185.0 Bq) of americium-241 each.

(b) A person shall not receive, acquire, possess, use or transfer radioactive material pursuant to the general license established by R313-21-22(9)(a) until that person has filed form DRC-07, "Registration Form-In Vitro Testing with Radioactive Material Under General License," with the Executive Secretary and received a Certificate of Registration signed by the Executive Secretary, or until that person has been authorized pursuant to R313-32 to use radioactive material under the general license in R313-21-22(9). The physician, veterinarian, clinical laboratory or hospital shall furnish on form DRC-07 the following information and other information as may be required by that form:

(i) name and address of the physician, veterinarian, clinical laboratory or hospital;

(ii) the location of use; and

(iii) a statement that the physician, veterinarian, clinical laboratory or hospital has appropriate radiation measuring instruments to carry out in vitro clinical or laboratory tests with

radioactive material as authorized under the general license in R313-21-22(9)(a) and that the tests will be performed only by personnel competent in the use of radiation measuring instruments and in the handling of the radioactive material.

(c) A person who receives, acquires, possesses or uses radioactive material pursuant to the general license established by R313-21-22(9)(a) shall comply with the following:

(i) The general licensee shall not possess at any one time, pursuant to the general license in R313-21-22(9)(a) at any one location of storage or use, a total amount of iodine-125, iodine-131, selenium-75, iron-59 and cobalt-57, or any combination, in excess of 200 microcuries (7.4 MBq).

(ii) The general licensee shall store the radioactive material, until used, in the original shipping container or in a container providing equivalent radiation protection.

(iii) The general licensee shall use the radioactive material only for the uses authorized by R313-21-22(9)(a).

(iv) The general licensee shall not transfer the radioactive material to a person who is not authorized to receive it pursuant to a license issued by the Executive Secretary, the Nuclear Regulatory Commission, an Agreement State or Licensing State, nor transfer the radioactive material in a manner other than in the unopened, labeled shipping container as received from the supplier.

(v) The general licensee shall dispose of the Mock Iodine-125 reference or calibration sources described in R313-21-22(9)(a)(viii) as required by R313-15-1001.

(vi) The general licensee shall pay annual fees pursuant to R313-70.

(d) The general licensee shall not receive, acquire, possess, or use radioactive material pursuant to R313-21-22(9)(a):

(i) Except as prepackaged units which are labeled in accordance with the provision of an applicable specific license issued pursuant to R313-22-75(8) or in accordance with the provisions of a specific license issued by the Nuclear Regulatory Commission, an Agreement State or Licensing State which authorizes the manufacture and distribution of iodine-125, iodine-131, carbon-14, hydrogen-3(tritium), iron-59, selenium-75, cobalt-57, or Mock Iodine-125 to persons generally licensed under R313-21-22(9) or its equivalent, and

(ii) Unless one of the following statements, as appropriate, or a substantially similar statement which contains the information called for in one of the following statements, appears on a label affixed to prepackaged units or appears in a leaflet or brochure which accompanies the package:

"This radioactive material shall be received, acquired, possessed and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of the United States Nuclear Regulatory Commission or of a state with which the Commission has entered into an agreement for the exercise of regulatory authority.

.....

Name of Manufacturer"

"This radioactive material shall be received, acquired, possessed and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of a Licensing State.

.....

Name of Manufacturer"

(e) The physician, veterinarian, clinical laboratory or hospital possessing or using radioactive material under the general license in R313-21-22(9)(a) shall report in writing to the Executive Secretary, changes in the information previously furnished in the "Registration Form-In Vitro Testing with Radioactive Material Under General License", form DRC -07. The report shall be furnished within 30 days after the effective date of a change.

(f) Any person using radioactive material pursuant to the general license of R313-21-22(9)(a) is exempt from the requirements of R313-15 and R313-18 with respect to radioactive material covered by that general license, except that persons using the Mock Iodine-125 described in R313-21-22(9)(a)(viii) shall comply with the provisions of R313-15-1001, R313-15-1201 and R313-15-1202.

(10) Ice Detection Devices.

(a) A general license is hereby issued to own, receive, acquire, possess, use and transfer strontium-90 contained in ice detection devices, provided each device contains no more than 50 microcuries (1.85 MBq) of strontium-90 and each device has been manufactured or imported in accordance with a specific license issued by the Nuclear Regulatory Commission or each device has been manufactured in accordance with the specifications contained in a specific license issued by the Executive Secretary or an Agreement State to the manufacturer of the device pursuant to licensing requirements equivalent to those in 10 CFR 32.61.

(b) Persons who own, receive, acquire, possess, use or transfer strontium-90 contained in ice detection devices pursuant to the general license in R313-21-22(10)(a):

(i) shall, upon occurrence of visually observable damage, such as a bend or crack or discoloration from over-heating to the device, discontinue use of the device until it has been inspected, tested for leakage and repaired by a person holding a specific license from the Nuclear Regulatory Commission or an Agreement State to manufacture or service the device; or shall dispose of the device pursuant to the provisions of these rules;

(ii) shall assure that all labels affixed to the device at the time of receipt, and which bear a statement which prohibits removal of the labels, are maintained thereon; and

(iii) are exempt from the requirements of R313-15 and R313-18 of these rules except that the persons shall comply with the provisions of R313-15-1001, R313-15-1201 and R313-15-1202.

(c) This general license does not authorize the manufacture, assembly, disassembly or repair of strontium-90 in ice detection devices.

(d) This general license is subject to the provision of R313-12-51 through R313-12-53, R313-12-70, R313-14, R313-19-34, R313-19-41, R313-19-61, and R313-19-100 of these rules.

KEY: radioactive material, general licenses, source material
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R313. Environmental Quality, Radiation Control.
R313-30. Therapeutic Radiation Machines.
R313-30-1. Scope and Applicability.

(1) R313-30 establishes requirements, for which the registrant is responsible, for use of therapeutic radiation machines. The provisions of R313-30 are in addition to, and not in substitution for, other applicable provisions of these rules.

(2) The use of therapeutic radiation machines shall be by, or under the supervision of, a licensed practitioner of the healing arts who meets the training and experience criteria established by R313-30-3(3).

(3) R313-30 shall only apply to therapeutic radiation machines which accelerate electrons into a target to produce bremsstrahlung or which accelerate electrons to produce a clinically useful electron beam.

R313-30-2. Definitions.

As used in R313-30, the following definitions apply:

"Absorbed dose (D)" means the mean energy imparted by ionizing radiation to matter. Absorbed dose is determined as the quotient of dE by dM, where dE is the mean energy imparted by ionizing radiation to matter of mass dM. The SI unit of absorbed dose is joule per kilogram and the special name of the unit of absorbed dose is the gray (Gy). The previously used special unit of absorbed dose (rad) is being replaced by the gray.

"Absorbed dose rate" means absorbed dose per unit time, for machines with timers, or dose monitor unit per unit time for linear accelerators.

"Accessible surfaces" means surface of equipment or of an equipment part that can be easily or accidentally touched by persons without the use of a tool, or without opening an access panel or door.

"Added filtration" means filtration which is in addition to the inherent filtration.

"Air kerma (K)" means the kinetic energy released in air by ionizing radiation. Kerma is determined as the quotient of dE by dM, where dE is the sum of the initial kinetic energies of the charged ionizing particles liberated by uncharged ionizing particles in air of mass dM. The SI unit of air kerma is joule per kilogram and the special name for the unit of kerma is the gray (Gy).

"Barrier" See "Protective barrier."

"Beam axis" means the axis of rotation of the radiation head.

"Beam-limiting device" means a field defining collimator which provides a means to restrict the dimensions of the useful beam.

"Beam monitoring system" means a system designed and installed in the radiation head to detect and measure the radiation present in the useful beam.

"Beam scattering foil" means a thin piece of material, usually metallic, placed in the beam to scatter a beam of electrons in order to provide a more uniform electron distribution in the useful beam.

"Bent beam linear accelerator" means a linear accelerator geometry in which the accelerated electron beam must change direction by passing through a bending magnet.

"Changeable filters" means filters, exclusive of inherent filtration, which can be removed from the useful beam through electronic, mechanical, or physical processes.

"Contact therapy system" means a therapeutic radiation machine with a short target to skin distance (TSD), usually less than five centimeters.

"Detector" See "Radiation detector."

"Dose monitor unit (DMU)" means a unit response from the beam monitoring system from which the absorbed dose can be calculated.

"External beam radiation therapy" means therapeutic irradiation in which the source of radiation is at a distance from the body.

"Field-flattening filter" means a filter used to homogenize the absorbed dose rate over the radiation field.

"Filter" means material placed in the useful beam to change beam quality in therapeutic radiation machines subject to R313-30-6.

"Gantry" means that part of a therapeutic radiation machine supporting and allowing movements of the radiation head about a center of rotation.

"Gray (Gy)" means the SI unit of absorbed dose, kerma, and specific energy imparted equal to 1 joule per kilogram. The previous unit of absorbed dose (rad) is being replaced by the gray. Note that 1 Gy equals 100 rad.

"Half-value layer (HVL)" means the thickness of a specified material which attenuates x-radiation or gamma radiation to the extent that the air kerma rate, exposure rate or absorbed dose rate is reduced to one-half of the value measured without the material at the same point.

"Interlock" means a device preventing the start or continued operation of equipment unless certain predetermined conditions prevail.

"Interruption of irradiation" means the stopping of irradiation with the possibility of continuing irradiation without resetting of operating conditions at the control panel.

"Irradiation" means the exposure of a living being or matter to ionizing radiation.

"Isocenter" means the center of the sphere through which the useful beam axis passes while the gantry moves through its full range of motions.

"Kilovolt (kV) or kilo electron volt (keV)" means the energy equal to that acquired by a particle with one electron charge in passing through a potential difference of one thousand volts in a vacuum. Current convention is to use kV for photons and keV for electrons.

"Lead equivalent" means the thickness of the material in question affording the same attenuation, under specified conditions, as lead.

"Leakage radiation" means radiation emanating from the therapeutic radiation machine except for the useful beam.

"Light field" means the area illuminated by light, simulating the radiation field.

"mA" means milliampere.

"Megavolt (MV) or mega electron volt (MeV)" means the energy equal to that acquired by a particle with one electron charge in passing through a potential difference of one million volts in a vacuum. Current convention is to use MV for photons and MeV for electrons.

"Monitor unit (MU)" See "Dose monitor unit."

"Moving beam radiation therapy" means radiation therapy

with continuous displacement of one or more mechanical axes relative to the patient during irradiation. It includes arc therapy, skip therapy, conformal therapy and rotational therapy.

"Nominal treatment distance" means:

(a) For electron irradiation, the distance from the scattering foil, virtual source, or exit window of the electron beam to the entrance surface of the irradiated object along the central axis of the useful beam.

(b) For x-ray irradiation, the virtual source or target to isocenter distance along the central axis of the useful beam. For non-isocentric equipment, this distance shall be that specified by the manufacturer.

"Patient" means an individual subjected to machine produced external beam radiation for the purposes of medical therapy.

"Peak tube potential" means the maximum value of the potential difference across the x-ray tube during an exposure.

"Periodic quality assurance check" means a procedure which is performed to ensure that a previous calibration continues to be valid.

"Phantom" means an object which attenuates, absorbs, and scatters ionizing radiation in the same quantitative manner as tissue.

"Practical range of electrons" corresponds to classical electron range where the only remaining contribution to dose is from bremsstrahlung x-rays.

"Primary dose monitoring system" means a system which will monitor the useful beam during irradiation and which will terminate irradiation when a pre-selected number of dose monitor units have been delivered.

"Primary protective barrier" See "Protective barrier."

"Protective barrier" means a barrier of radiation absorbing materials used to reduce radiation exposure. The types of protective barriers are as follows:

(a) "Primary protective barrier" means the material, excluding filters, placed in the useful beam or a barrier which attenuates the primary beam.

(b) "Secondary protective barrier" means the material which attenuates stray radiation.

"Radiation detector" means a device which, in the presence of radiation provides, by either direct or indirect means a signal or other indication suitable for use in measuring one or more quantities of incident radiation.

"Radiation field" See "Useful beam."

"Radiation head" means the structure from which the useful beam emerges.

"Radiation Therapy Physicist" means an individual qualified in accordance with R313-30-3(4).

"Redundant beam monitoring system" means a combination of two dose monitoring systems in which each system is designed to terminate irradiation in accordance with a pre-selected number of dose monitor units.

"Scattered radiation" means ionizing radiation emitted by interaction of ionizing radiation with matter, the interaction being accompanied by a change in direction of the radiation.

"Secondary dose monitoring system" means a system which will terminate irradiation in the event of failure of the primary dose monitoring system.

"Secondary protective barrier" See "Protective barrier."

"Shadow tray" means a device attached to the radiation head to support auxiliary beam blocking material.

"Shutter" means a device attached to the tube housing assembly which can totally intercept the useful beam and which has a lead equivalency not less than that of the tube housing assembly.

"Sievert (Sv)" means the SI unit of dose equivalent. The unit of dose equivalent is the joule per kilogram. The previous unit of dose equivalent (rem) is being replaced by the sievert. Note that 1 Sv equals 100 rem.

"Simulator, or radiation therapy simulation system" means an x-ray system intended for localizing the volume to be exposed during radiation therapy and reproducing the position and size of the therapeutic irradiation field.

"Source" means the region or material from which the radiation emanates.

"Source-skin distance (SSD)" See "Target-skin distance."

"Stationary beam radiation therapy" means radiation therapy without displacement of the radiation source relative to the patient during irradiation.

"Stray radiation" means the sum of leakage and scattered radiation.

"Target" means that part of an x-ray tube or particle accelerator onto which is directed a beam of accelerated particles to produce ionizing radiation or other particles.

"Target-skin distance (TSD)" means the distance measured along the beam axis from the center of the front surface of the x-ray target or electron virtual source to the surface of the irradiated object or patient.

"Tenth-value layer (TVL)" means the thickness of a specified material which, x-radiation or gamma radiation to the extent that the air kerma rate, exposure rate or absorbed dose rate is reduced to one-tenth of the value measured without the material at the same point.

"Termination of irradiation" means the stopping of irradiation in a fashion which will not permit continuance of irradiation without the resetting of operating conditions at the control panel.

"Therapeutic radiation machine" means x-ray or electron-producing equipment designed and used for external beam radiation therapy.

"Tube" means an x-ray tube, unless otherwise specified.

"Tube housing assembly" means the tube housing with tube installed. It includes high-voltage and filament transformers and other appropriate elements that are contained within the tube housing.

"Useful beam" means the radiation emanating from the tube housing port or the radiation head and passing through the aperture of the beam limiting device when the exposure controls are in a mode to cause the therapeutic radiation machine to produce radiation.

"Virtual source" means a point from which radiation appears to originate.

"Wedge filter" means a filter which effects continuous change in transmission over all or a part of the radiation field.

"X-ray tube" means an electron tube which is designed to be used primarily for the production of x-rays.

R313-30-3. General Administrative Requirements for

Facilities Using Therapeutic Radiation Machines.

(1) Administrative Controls. The registrant shall be responsible for directing the operation of the therapeutic radiation machines which have been registered with the Department. The registrant or the registrant's agent shall ensure that the requirements of R313-30 are met in the operation of the therapeutic radiation machines.

(2) A therapeutic radiation machine which does not meet the provisions of these rules shall not be used for irradiation of patients.

(3) Training for External Beam Radiation Therapy Authorized Users. The registrant for a therapeutic radiation machine subject to R313-30-6 or R313-30-7 shall require the authorized user to be a physician who:

(a) Is certified in:

(i) Radiology or therapeutic radiology by the American Board of Radiology; or

(ii) Radiation oncology by the American Osteopathic Board of Radiology; or

(iii) Radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or

(iv) Therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or

(b) Is in the active practice of therapeutic radiology, and has completed 200 hours of instruction in basic radiation techniques applicable to the use of an external beam radiation therapy unit, 500 hours of supervised work experience, and a minimum of three years of supervised clinical experience.

(i) To satisfy the requirement for instruction, the classroom and laboratory training shall include:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity; and

(D) Radiation biology.

(ii) To satisfy the requirement for supervised work experience, training shall be under the supervision of an authorized user and shall include:

(A) Review of the full calibration measurements and periodic quality assurance checks;

(B) Preparing treatment plans and calculating treatment times;

(C) Using administrative controls to prevent misadministrations;

(D) Implementing emergency procedures to be followed in the event of the abnormal operation of a external beam radiation therapy unit or console; and

(E) Checking and using radiation survey meters.

(iii) To satisfy the requirement for a period of supervised clinical experience, training shall include 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. The supervised clinical experience shall include:

(A) Examining individuals and reviewing their case histories to determine their suitability for external beam radiation therapy treatment, and limitations and contraindications;

(B) Selecting proper dose and how it is to be administered;

(C) Calculating the external beam radiation therapy doses and collaborating with the authorized user in the review of patients' progress and consideration of the need to modify originally prescribed doses as warranted by patients' reaction to radiation; and

(D) Post-administration follow-up and review of case histories.

(iv) An individual who satisfies the requirements in R313-30-3(b), but not R313-30-3(a), must submit an application to the Executive Secretary and must satisfy the requirements in R313-30-3(a) within one year of initial application to the Executive Secretary.

(c) After December 31, 1994, a physician shall not act as an authorized user for a therapeutic radiation machine until the physician's training has been reviewed and approved by the Executive Secretary.

(4) Training for Radiation Therapy Physicist. The registrant for a therapeutic radiation machine subject to R313-30-6 or R313-30-7 shall require the Radiation Therapy Physicist to:

(a) Be approved by the Board as a qualified expert, under the provisions of R313-16 of these rules, as a provider of radiation services in the area of calibration and compliance surveys of external beam radiation therapy units; and

(b) Be certified by the American Board of Radiology in:

(i) Therapeutic radiological physics; or

(ii) Roentgen-ray and gamma-ray physics; or

(iii) X-ray and radium physics; or

(iv) Radiological physics; or

(c) Be certified by the American Board of Medical Physics in Radiation Oncology Physics; or

(d) Be certified by the Canadian College of Medical Physics; or

(e) Hold a master's or doctor's degree in physics, biophysics, radiological physics, or health physics, and have completed one year of full time training in therapeutic radiological physics and also one year of full time work experience under the supervision of a Radiation Therapy Physicist at a medical institution. To meet this requirement, the individual shall have performed the tasks listed in R313-30-4(1), R313-30-6(16), R313-30-7(19), R313-30-6(17), and R313-30-7(20) under the supervision of a Radiation Therapy Physicist during the year of work experience.

(f) Notwithstanding the provisions of R313-30-3(4)(e), certification pursuant to R313-30-3(4)(b), (c) or (d) shall be required on or before December 31, 1999 for all persons currently qualifying as a Radiation Therapy Physicist pursuant to R313-30-3(4)(e).

(5) Qualifications of Operators.

(a) Individuals who will be operating a therapeutic radiation machine for medical use shall be American Registry of Radiologic Technologists (ARRT) Registered Radiation Therapy Technologists.

(b) The names and training of personnel currently operating a therapeutic radiation machine shall be kept on file

at the facility. Information on former operators shall be retained for a period of at least two years beyond the last date they were authorized to operate a therapeutic radiation machine at that facility.

(6) Written safety procedures and rules shall be developed by a Radiation Therapy Physicist and shall be available in the control area of a therapeutic radiation machine, including restrictions required for the safe operation of the particular therapeutic radiation machine. The operator shall be familiar with these rules as required in R313-18-12(1)(c).

(7) Individuals shall not be exposed to the useful beam except for medical therapy purposes. Exposure for medical therapy purposes shall be ordered in writing by an authorized user who is specifically identified on the Certificate of Registration. This provision specifically prohibits deliberate exposure of an individual for training, demonstration or other non-healing-arts purposes.

(8) Visiting Authorized User. Notwithstanding the provisions of R313-30-3(7), a registrant may permit a physician to act as a visiting authorized user under the term of the registrant's Certificate of Registration for up to 60 days per calendar year under the following conditions:

(a) The visiting authorized user has the prior written permission of the registrant's management and, if the use occurs on behalf of an institution, the institution's Radiation Safety Committee; and

(b) The visiting authorized user meets the requirements established for authorized users in R313-30-3(3)(a) and R313-30-3(3)(b); and

(c) The registrant maintains copies of records specified by R313-30-3(8) for five years from the date of the last visit.

(9) Individuals associated with the operation of a therapeutic radiation machine shall be instructed in and shall comply with the provisions of the registrant's quality management program. In addition to the requirements of R313-30, these individuals are also subject to the requirements of R313-15-201, R313-15-202, R313-15-205 and R313-15-502.

(10) Information and Maintenance Record and Associated Information. The registrant shall maintain the following information in a separate file or package for therapeutic radiation machines, for inspection by the representatives of the Executive Secretary:

(a) Report of acceptance testing;

(b) Records of surveys, calibrations, and periodic quality assurance checks of the therapeutic radiation machine required by R313-30, as well as the names of persons who performed the activities;

(c) Records of major maintenance and modifications performed on the therapeutic radiation machine after the effective date of these rules, as well as the names of persons who performed the services; and

(d) Signature of person authorizing the return of therapeutic radiation machine to clinical use after service, repair, or upgrade.

(11) Records Retention. Records required by R313-30 shall be retained until disposal is authorized by the Executive Secretary unless another retention period is specifically authorized in R313-30. Required records shall be retained in an active file from at least the time of generation until the next inspection by a representative of the Executive Secretary. A required record generated prior to the last inspection may be microfilmed or otherwise archived as long as a complete copy of said record can be retrieved until the Executive Secretary authorizes final disposal.

R313-30-4. General Technical Requirements for Facilities Using Therapeutic Radiation Machines.

(1) Protection Surveys.

(a) The registrant shall ensure that radiation protection surveys of new facilities, and existing facilities not previously surveyed are performed with an operable radiation measurement survey instrument calibrated in accordance with R313-30-8. The radiation protection survey shall be performed by, or under the direction of, a Radiation Therapy Physicist or a Certified Health Physicist and shall verify that, with the therapeutic radiation machine in a "BEAM-ON" condition, with the largest clinically available treatment field and with a scattering phantom in the useful beam of radiation:

(i) Radiation levels in restricted areas are not likely to cause personnel exposures in excess of the limits specified in R313-15-201(1); and

(ii) Radiation levels in unrestricted areas do not exceed the limits specified in R313-15-301(1).

(b) In addition to the requirements of R313-30-4(1)(a), a radiation protection survey shall also be performed prior to subsequent medical use and:

(i) After making changes in the treatment room shielding;

(ii) After making changes in the location of the therapeutic radiation machine within the treatment room;

(iii) After relocation of, or modification of, the therapeutic radiation machine; or

(iv) Before using the therapeutic radiation machine in a manner that could result in increased radiation levels in areas outside the external beam radiation therapy treatment room.

(c) The survey record shall indicate instances where the facility, in the opinion of the Radiation Therapy Physicist or a Certified Health Physicist, is in violation of applicable radiation protection rules. The survey record shall also include the date of the measurements, the reason the survey is required, the manufacturer's name, model number and serial number of the therapeutic radiation machine, the instruments used to measure radiation levels, a plan of the areas surrounding the treatment room that were surveyed, the measured dose rate at several points in areas expressed in microsieverts, millirems, per hour, the calculated maximum level of radiation over a period of one week for restricted and unrestricted areas, and the signature of the individual responsible for conducting the survey;

(d) If the results of the surveys required by R313-30-4(1)(a) or R313-30-4(1)(b) indicate radiation levels in excess of the respective limit specified in R313-30-4(1)(a), the registrant shall lock the control in the "OFF" position and not use the unit:

(i) Except as may be necessary to repair, replace, or test the therapeutic radiation machine, the therapeutic radiation machine shielding, or the treatment room shielding; or

(ii) Until the registrant has received a specific exemption from the Board.

(2) Modification of Radiation Therapy Unit or Room Before Beginning a Treatment Program. If the survey required

by R313-30-4(1) indicates that an individual in an unrestricted area may be exposed to levels of radiation greater than those permitted by R313-15-301(1) of these rules, before beginning the treatment program the registrant shall:

(a) Either equip the unit with beam direction interlocks or add additional radiation shielding to ensure compliance with R313-15-301(1) of these rules;

(b) Perform the survey required by R313-30-4(1) again; and

(c) Include in the report required by R313-30-4(4) the results of the initial survey, a description of the modification made to comply with R313-30-4(2)(a), and the results of the second survey; or

(d) Request and receive a registration amendment under R313-15-301(3) of these rules that authorizes radiation levels in unrestricted areas greater than those permitted by R313-15-301(1) of these rules.

(3) Possession of Survey Instruments. Facility locations authorized to use a therapeutic radiation machine in accordance with R313-30-6 and R313-30-7 shall possess appropriately calibrated portable monitoring equipment. As a minimum, the equipment shall include a portable radiation measurement survey instrument capable of measuring dose rates over the range 10 uSv (1 mrem) per hour to 10 mSv (1000 mrem) per hour. The survey instruments shall be operable and calibrated in accordance with R313-30-8.

(4) Reports of External Beam Radiation Therapy Surveys and Measurements. The registrant for a therapeutic radiation machine subject to R313-30-6 or R313-30-7 shall furnish a copy of the records required in R313-30-4(1) and R313-30-4(2) to the Executive Secretary within 30 days following completion of the action that initiated the record requirement.

R313-30-5. Quality Management Program.

(1) In addition to the definitions in R313-30-2, the following definitions are applicable to a quality management program:

"Course" means the entire treatment consisting of multiple fractions as prescribed in the written directive.

"Misadministration" means the administration of an external beam radiation therapy dose:

(a) Involving the wrong patient, wrong treatment modality, or wrong treatment site;

(b) 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;

(c) When the calculated weekly administered dose differs from the weekly prescribed dose by more than 30 percent; or

(d) When the calculated total administered dose differs from the total prescribed dose by more than 20 percent of the total prescribed dose;

"Prescribed dose" means the total dose and dose per fraction as documented in the written directive.

"Recordable event" means the administration of an external beam radiation therapy dose when the calculated weekly administered dose differs by 15 percent or more from the weekly prescribed dose;

"Written directive" means an order in writing for a specific patient, dated and signed by an authorized user prior to the administration of radiation, containing the following information: total dose, dose per fraction, treatment site and overall treatment period.

(2) Scope and Applicability. Applicants or registrants subject to R313-30-6 or R313-30-7 shall establish and maintain a written quality management program to provide high confidence that radiation 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) Prior to administration, a written directive is prepared for an external beam radiation therapy dose;

(i) Notwithstanding R313-30-5(2)(a), a written revision to an existing written directive may be made provided that the revision is dated and signed by an authorized user prior to administration of the external beam radiation therapy dose or the next external beam radiation therapy fractional dose;

(ii) Notwithstanding R313-30-5(2)(a), 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 shall be acceptable, provided that the oral revision is documented immediately in the patient's record and a revised written directive is signed by an authorized user within 48 hours of the oral revision;

(iii) Notwithstanding R313-30-5(2)(a), 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 shall 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 and signed by an authorized user within 24 hours of the oral directive.

(b) Prior to the administration of a course of radiation treatments, the patient's identity is verified, by more than one method, as the individual named in the written directive;

(c) External beam radiation therapy final plans of treatment and related calculations are in accordance with the respective written directives;

(d) An administration is in accordance with the written directive; and

(e) Unintended deviations from the written directive is identified and evaluated, and appropriate action are taken.

(3) Development of Quality Management Program.

(a) An application for registration subject to R313-30-6 or R313-30-7 shall include a quality management program that specifies staff, duties and responsibilities, and equipment and procedures as part of the application required by R313-16 of these rules. The registrant shall implement the program upon issuance of a Certificate of Registration by the Executive Secretary;

(b) Existing registrants subject to R313-30-6 or R313-30-7 shall submit to the Executive Secretary a written certification that a quality management program has been implemented by December 31, 1994.

(4) As a part of the quality management program, the registrant shall:

(a) Develop procedures for, and conduct a review of, the

quality management program including, since the last review, an evaluation of a representative sample of patient administrations, recordable events, and misadministrations to verify compliance with the quality management program;

(b) Conduct these reviews annually. The intervals should not exceed 12 months and shall not exceed 13 months;

(c) Evaluate these reviews to determine the effectiveness of the quality management program and, if required, make modifications to meet the requirements of R313-30-5(2); and

(d) Maintain records of these reviews, including the evaluations and findings of the reviews, in a form that can be readily audited, for three years.

(5) The registrant shall evaluate and respond, within 30 days after discovery of the recordable event, to recordable events by:

(a) Assembling the relevant facts including the cause;

(b) Identifying what corrective actions are required to prevent recurrence; and

(c) Retaining a record, in a form that can be readily audited, for three years, of the relevant facts and what corrective actions were taken.

(6) The registrant shall retain:

(a) Written directives; and

(b) A record of administered radiation doses, in a form that can be readily audited, for three years after the date of administration.

(7) The registrant may make modifications to the quality management program to increase the program's efficiency provided the program's effectiveness is not decreased.

(8) The registrant shall evaluate misadministrations and shall take the following actions in response to a misadministration:

(a) Notify the Executive Secretary by telephone no later than the next calendar day after discovery of the misadministration;

(b) Submit a written report to the Executive Secretary within 15 days after discovery of the misadministration. The written report shall include: the registrant's name; the prescribing physician's name; a brief description of the event; why the event occurred; the effect on the patient; what improvements are needed to prevent recurrence; actions taken to prevent recurrence; whether the registrant notified the patient or the patient's responsible relative or guardian, this person will subsequently be referred to as "the patient," and if not, why not; and if the patient was notified, what information was provided to the patient. The report shall not include the patient's name or other information that could lead to identification of the patient;

(c) Notify the referring physician and also notify the patient of the misadministration no later than 24 hours after its discovery, unless the referring physician personally informs the registrant either that the physician will inform the patient, or that, based on medical judgment, telling the patient would be harmful. The registrant is not required to notify the patient without first consulting the referring physician. If the referring physician or patient cannot be reached within 24 hours, the registrant shall notify the patient as soon as possible thereafter. The registrant shall not delay appropriate medical care for the patient, including necessary remedial care as a result of the misadministration, because of a delay in notification;

(d) Retain a record of misadministrations for five years. The record shall contain the names of individuals involved; including the prescribing physician, allied health personnel, the patient, and the patient's referring physician; the patient's social security number or identification number if one has been assigned; a brief description of the event; why it occurred; the effect on the patient; what improvements are needed to prevent recurrence; and the actions taken to prevent recurrence; and

(e) If the patient was notified, furnish, within 15 days after discovery of the misadministration, a written report to the patient by sending either a copy of the report that was submitted to the Executive Secretary, or a brief description of both the event and the consequences as they may effect the patient, provided a statement is included that the report submitted to the Executive Secretary can be obtained from the registrant;

(9) Aside from the notification requirement, nothing in R313-30-5(8) affects the rights or duties of registrants and physicians in relation to patients, the patient's responsible relatives or guardians, or to others.

R313-30-6. Therapeutic Radiation Machines of Less Than 500 kV.

(1) Leakage Radiation. When the x-ray tube is operated at its maximum rated tube current for the maximum kV, the leakage air kerma rate shall not exceed the value specified at the distance specified for that classification of therapeutic radiation machine:

(a) Systems 5-50 kV. The leakage air kerma rate measured at a position five centimeters from the tube housing assembly shall not exceed 1 mGy (100 mrad) in one hour.

(b) Systems greater than 50 and less than 500 kV. The leakage air kerma rate measured at a distance of one meter from the source in every direction shall not exceed 1 cGy (1 rad) in one hour. This air kerma rate measurement may be averaged over areas no larger than 100 square centimeters. In addition, the air kerma rate at a distance of five centimeters from the surface of the tube housing assembly shall not exceed 30 cGy (30 rad) per hour.

(2) Permanent Beam Limiting Devices. Permanent diaphragms or cones used for limiting the useful beam shall provide at least the same degree of attenuation as required for the tube housing assembly.

(3) Adjustable or Removable Beam Limiting Devices.

(a) Adjustable or removable beam limiting devices, diaphragms, cones or blocks shall not transmit more than five percent of the useful beam for the most penetrating beam used;

(b) When adjustable beam limiting devices are used, the position and shape of the radiation field shall be indicated by a light beam.

(4) Filter System. The filter system shall be so designed that:

(a) Filters can not be accidentally displaced at every possible tube orientation;

(b) For equipment installed after the effective date of these rules, an interlock system prevents irradiation if the proper filter is not in place;

(c) The air kerma rate escaping from the filter slot shall not exceed 1 cGy (1 rad) per hour at one meter under operating conditions; and

(d) Filters shall be marked as to its material of construction and its thickness.

(5) Tube Immobilization.

(a) The x-ray tube shall be so mounted that it can not accidentally turn or slide with respect to the housing aperture; and

(b) The tube housing assembly shall be capable of being immobilized for stationary portal treatments.

(6) Source Marking. The tube housing assembly shall be so marked that it is possible to determine the location of the source to within five millimeters, and the marking shall be readily accessible for use during calibration procedures.

(7) Beam Block. Contact therapy tube housing assemblies shall have a removable shield of material, equivalent in attenuation to 0.5 millimeters of lead at 100 kV, which can be positioned over the entire useful beam exit port during periods when the beam is not in use.

(8) Timer. A suitable irradiation control device shall be provided to terminate the irradiation after a pre-set time interval.

(a) A timer which has a display shall be provided at the treatment control panel. The timer shall have a pre-set time selector. The timer shall activate with an indication of "BEAM-ON" and retain its reading after irradiation is interrupted or terminated. After irradiation is terminated and before irradiation can be reinitiated, it shall be necessary to reset the timer;

(b) For equipment manufactured after the effective date of these rules, the timer shall be a cumulative timer with an elapsed time indicator. Otherwise, the timer may be a countdown timer;

(c) The timer shall terminate irradiation when a pre-selected time has elapsed, if the dose monitoring system present has not previously terminated irradiation;

(d) The timer shall permit pre-setting and determination of exposure times as short as one second;

(e) The timer shall not permit an exposure if set at zero;

(f) The timer shall not activate until the shutter is opened when irradiation is controlled by a shutter mechanism unless calibration includes a timer error correction to compensate for mechanical lag; and

(g) Timer shall be accurate to within one percent of the selected value or to within one second, whichever is greater.

(9) Control Panel Functions. The control panel, in addition to the displays required by other provisions in R313-30-6, shall have:

(a) An indication of whether electrical power is available at the control panel and if activation of the x-ray tube is possible;

(b) An indication of whether x-rays are being produced;

(c) Means for indicating x-ray tube potential and current;

(d) The means for terminating an exposure at any time;

(e) A locking device which will prevent unauthorized use of the therapeutic radiation machine; and

(f) For therapeutic radiation machines manufactured after the effective date of these rules, a positive display of specific filters in the beam.

(10) Multiple Tubes. When a control panel may energize more than one x-ray tube:

(a) It shall be possible to activate only one x-ray tube at a time;

(b) There shall be an indication at the control panel identifying which x-ray tube is activated; and

(c) There shall be an indication at the tube housing assembly when that tube is energized.

(11) Target-to-Skin Distance (TSD). There shall be a means of determining the central axis TSD to within one centimeter and of reproducing this measurement to within two millimeters thereafter.

(12) Shutters. Unless it is possible to bring the x-ray output to the prescribed exposure parameters within five seconds after the x-ray "ON" switch is energized, the beam shall be attenuated by a shutter having a lead equivalency not less than that of the tube housing assembly. In addition, after the unit is at operating parameters, the shutter shall be controlled electrically by the operator from the control panel. An indication of shutter position shall appear at the control panel.

(13) Low Filtration X-ray Tubes. Therapeutic radiation machines equipped with a beryllium or other low-filtration window shall have a label clearly marked on the tube housing assembly and shall be provided with a permanent warning device on the control panel that is activated when no additional filtration is present, to indicate that the dose rate is very high.

(14) Facility Design Requirements for Therapeutic Radiation Machines Capable of Operating in the Range 50 kV to 500 kV. In addition to shielding adequate to meet requirements of R313-30-9, the treatment room shall meet the following design requirements:

(a) Aural Communication. Provision shall be made for continuous two-way aural communication between the patient and the operator at the control panel;

(b) Viewing Systems. Provision shall be made to permit continuous observation of the patient during irradiation and the viewing system shall be so located that the operator can observe the patient from the control panel. The therapeutic radiation machine shall not be used for patient irradiation unless at least one viewing system is operational.

(15) Additional Requirements. Treatment rooms which contain a therapeutic radiation machine capable of operating above 150 kV shall meet the following additional requirements:

(a) Protective barriers shall be fixed except for entrance doors or beam interceptors;

(b) The control panel shall be located outside the treatment room or in a totally enclosed booth, which has a ceiling, inside the room;

(c) Interlocks shall be provided so that entrance doors, including doors to interior booths, shall be closed before treatment can be initiated or continued. If the radiation beam is interrupted by a door opening, it shall not be possible to restore the machine to operation without closing the door and reinitiating irradiation by manual action at the control panel; and

(d) When a door referred to in R313-30-6(15)(c) is opened while the x-ray tube is activated, the irradiation shall be interrupted either electrically or by the closure of the shutter.

(16) Full Calibration Measurements.

(a) Full calibration of a therapeutic radiation machine subject to R313-30-6 shall be performed by, or under the direct supervision of, a Radiation Therapy Physicist:

(i) Before the first medical use following installation or reinstallation of the therapeutic radiation machine;

(ii) Annually. The intervals should not exceed 12 months and shall not exceed 13 months; and

(iii) Before medical use under the following conditions:

(A) Whenever quality assurance check measurements indicate that the radiation output differs by more than five percent from the value obtained at the last full calibration and the difference cannot be reconciled; and

(B) Following a component replacement, major repair, or modification of components that could significantly affect the characteristics of the radiation beam.

(iv) Notwithstanding the requirements of R313-30-6(16)(a)(iii):

(A) Full calibration of therapeutic radiation machines with multi-energy capabilities is required only for those modes and energies that are not within their acceptable range; and

(B) If the repair, replacement or modification does not affect all energies, full calibration shall be performed on the affected energy that is in most frequent clinical use at the facility. The remaining energies may be validated with quality assurance check procedures against the criteria in R313-30-6(16)(a)(iii)(A).

(v) The registrant shall use the dosimetry system described in R313-30-8(6)(a) to perform the full calibration required in R313-30-6(16)(b);

(b) To satisfy the requirement of R313-30-6(16)(a), full calibration shall include measurements recommended for annual calibration by NCRP Report 69, "Dosimetry of X-Ray and Gamma Ray Beams for Radiation Therapy in the Energy Range 10 keV to 50 MeV," 1981 ed., which is adopted and incorporated by reference.

(c) The registrant shall maintain a record of calibrations for the duration of the registration. The record shall include the date of the calibration, the manufacturer's name, model number, and serial number for both the therapeutic radiation machine and the x-ray tube, the model numbers and serial numbers of the instruments used to calibrate the therapeutic radiation machine, and the signature of the Radiation Therapy Physicist responsible for performing the calibration.

(17) Periodic Quality Assurance Checks.

(a) Periodic quality assurance checks shall be performed on therapeutic radiation machines subject to R313-30-6, which are capable of operation at greater than 50 kV.

(b) To satisfy the requirement of R313-30-6(17)(a), quality assurance checks shall meet the following requirements:

(i) The registrant shall perform quality assurance checks in accordance with written procedures established by the Radiation Therapy Physicist; and

(ii) The quality assurance check procedures shall specify the frequency at which tests or measurements are to be performed. The quality assurance check procedures shall specify that the quality assurance check shall be performed during the calibration specified in R313-30-6(16)(a). The acceptable tolerance for parameters measured in the quality assurance check, when compared to the value for that parameter determined in the calibration specified in R313-30-6(16)(a), shall be stated.

(c) The cause for a parameter exceeding a tolerance set by the Radiation Therapy Physicist shall be investigated and corrected before the system is used for patient irradiation;

(d) Whenever a quality assurance check indicates a significant change in the operating characteristics of a system, as specified in the Radiation Therapy Physicist's quality assurance check procedures, the system shall be recalibrated as required in R313-30-6(16)(a);

(e) The registrant shall use the dosimetry system described in R313-30-8(6)(b) to make the quality assurance check required in R313-30-6(17)(b);

(f) The registrant shall have the Radiation Therapy Physicist review and sign the results of radiation output quality assurance checks monthly. The interval should not exceed 30 days and shall not exceed 40 days;

(g) Therapeutic radiation machines subject to R313-30-6 shall have safety quality assurance checks of external beam radiation therapy facilities performed monthly. The interval should not exceed 30 days and shall not exceed 40 days;

(h) Notwithstanding the requirements of R313-30-6(17)(f) and R313-30-6(17)(g), the registrant shall ensure that no therapeutic radiation machine is used to administer radiation to humans unless the quality assurance checks required by R313-30-6(17)(f) and R313-30-6(17)(g) have been performed within the required interval immediately prior to the administration;

(i) To satisfy the requirement of R313-30-6(17)(g), safety quality assurance checks shall ensure proper operation of:

(i) Electrical interlocks at external beam radiation therapy room entrances;

(ii) Proper operation of the "BEAM-ON" and termination switches;

(iii) Beam condition indicator lights on the access doors, control console, and in the radiation therapy room;

(iv) Viewing systems;

(v) If applicable, electrically operated treatment room doors from inside and outside the treatment room;

(j) The registrant shall maintain a record of quality assurance checks required by R313-30-6(17)(a) and R313-30-6(17)(g) for three years. The record shall include the date of the quality assurance check, the manufacturer's name, model number, and serial number for the therapeutic radiation machine, the manufacturer's name, model number and serial number of the instruments used to measure the radiation output of the therapeutic radiation machine, and the signature of the individual who performed the periodic quality assurance check.

(18) Operating Procedures.

(a) The therapeutic radiation machine shall not be used for irradiation of patients unless the requirements of R313-30-6(16) and R313-30-6(17) have been met;

(b) Therapeutic radiation machines shall not be left unattended unless secured pursuant to R313-30-6(9)(e);

(c) When a patient must be held in position for radiation therapy, mechanical supporting or restraining devices shall be used;

(d) The tube housing assembly shall not be held by an individual during operation unless the assembly is designed to require holding and the peak tube potential of the system does not exceed 50 kV. In these cases, the holder shall wear protective gloves and apron of not less than 0.5 millimeters lead equivalency at 100 kV;

(e) A copy of the current operating and emergency procedures shall be maintained at the therapeutic radiation

machine control console; and

(f) No individual other than the patient shall be in the treatment room during exposures from therapeutic radiation machines operating above 150 kV. At energies less than or equal to 150 kV, individuals, other than the patient, in the treatment room shall be protected by a barrier sufficient to meet the requirements of R313-15-201 of these rules.

R313-30-7. Therapeutic Radiation Machines - Photon Therapy Systems (500 kV and Above) and Electron Therapy Systems (500 keV and Above).

(1) Leakage Radiation Outside the Maximum Useful Beam in Photon and Electron Modes.

(a) The absorbed dose rate due to leakage radiation (excluding neutrons) at any point outside the maximum sized useful beam, but within a circular plane of radius two meters which is perpendicular to and centered on the central axis of the useful beam at the nominal treatment distance, that is at the plane of the patient, shall not exceed a maximum of 0.2 percent and an average of 0.1 percent of the absorbed dose rate on the central axis of the beam at the nominal treatment distance. Measurements shall be averaged over an area not exceeding 100 square centimeters at a minimum of 16 points uniformly distributed in the plane;

(b) Except for the area defined in R313-30-7(1)(a), the absorbed dose rate, excluding that from neutrons, at one meter from the electron path between the electron source and the target or electron window shall not exceed 0.5 percent of the absorbed dose rate on the central axis of the beam at the nominal treatment distance. Measurements shall be averaged over an area not exceeding 100 square centimeters;

(c) For equipment manufactured after the effective date of these rules, the neutron absorbed dose outside the useful beam shall be in compliance with applicable acceptance criteria; and

(d) For therapeutic radiation machines, the registrant shall determine, or obtain from the manufacturer, the leakage radiation existing at the positions specified in R313-30-7(1)(a) through R313-30-7(1)(c) for the specified operating conditions. Records on leakage radiation measurements shall be maintained at the installation for inspection by representatives of the Executive Secretary.

(2) Leakage Radiation Through Beam Limiting Devices.

(a) Photon Radiation.

(i) Adjustable or interchangeable beam limiting devices, such as the collimating jaws or x-ray cones, shall attenuate the useful beam so that at the nominal treatment distance, the maximum absorbed dose anywhere in the area shielded by the beam limiting devices shall not exceed two percent of the maximum absorbed dose on the central axis of the useful beam measured in a ten centimeters by ten centimeters radiation field; and

(ii) Interchangeable beam limiting devices, such as auxiliary beam blocking material, shall attenuate the useful beam so that at the nominal treatment distance, the maximum absorbed dose anywhere in the area shielded by the interchangeable beam limiting device shall not exceed five percent of the maximum absorbed dose on the central axis of the useful beam measured in a ten centimeter by ten centimeter radiation field.

(b) Electron Radiation. Adjustable or interchangeable electron applicators shall attenuate the radiation, including but not limited to photon radiation generated by electrons incident on the beam limiting device and electron applicator and other parts of the radiation head, so that the absorbed dose in a plane perpendicular to the central axis of the useful beam at the nominal treatment distance shall not exceed:

(i) A maximum of two percent of the absorbed dose on the central axis of the useful beam at the nominal treatment distance. This limit shall apply beyond a line seven centimeters outside the periphery of the useful beam; and

(ii) A maximum of ten percent of the absorbed dose on the central axis of the useful beam at the nominal treatment distance. This limit shall apply beyond a line two centimeters outside the periphery of the useful beam.

(c) Measurement of Leakage Radiation.

(i) Photon Radiation. Measurements of leakage radiation through the beam limiting devices shall be made with the beam limiting devices closed and residual apertures blocked by at least two tenth value layers of suitable absorbing material. In the case of overlapping beam limiting devices, the leakage radiation through the sets of beam limiting devices shall be measured independently at the depth of maximum dose. Measurements shall be made using a radiation detector of area not exceeding ten square centimeters;

(ii) Electron Radiation. Measurements of leakage radiation through the electron applicators shall be made with an appropriate radiation detector suitably protected against radiation which has been scattered from material beyond the radiation detector. Measurements shall be made using an appropriate amount of water equivalent build up material for the energies being measured.

(3) Filters and Wedges.

(a) Filters and wedges which are removable from the system shall be clearly marked with an identification number;

(i) For removable wedge filters, the nominal wedge angle shall appear on the wedge, or on the wedge tray if the wedge filter is permanently mounted to the tray.

(ii) If the wedge or wedge tray is damaged, the Radiation Therapy Physicist will decide if the wedge transmission factor shall be redetermined;

(b) For equipment manufactured after the effective date of these rules which utilize a system of wedge filters:

(i) Irradiation shall not be possible until a selection of a wedge filter or a positive selection to use "no wedge filter" has been made at the treatment control panel;

(ii) An interlock system shall be provided to prevent irradiation if the wedge filter selected is not in the correct position;

(iii) A display shall be provided at the treatment control panel showing the wedge filters in use; and

(iv) An interlock shall be provided to prevent irradiation if a wedge filter selection operation, either manual or automatic, carried out in the treatment room does not agree with the wedge filter selection operation carried out at the treatment control panel.

(c) If the absorbed dose rate information required by R313-30-7(8) relates exclusively to operation with a field flattening filter or beam scattering foil in place, the filter or foil

shall be removable only by the use of tools. If removable, the filter or foil shall be interlocked to prevent incorrect selection and incorrect positioning.

(d) For equipment manufactured after the effective date of these rules which utilize a system of interchangeable field flattening filters or interchangeable beam scattering foils:

(i) An interlock system shall be provided to prevent irradiation if the appropriate flattening filter for the x-ray energy selected is not in the correct position in the beam;

(ii) An interlock system shall be provided to prevent irradiation if the appropriate beam scattering foil for the electron energy selected is not in the correct position in the beam;

(iii) An interlock system shall be provided to prevent irradiation if no scattering foil is in place for the electron beams, or if no flattening filter is in place for the x-ray beams; and

(iv) A display shall be provided at the treatment control panel showing a fault indicator when the interlock system has prevented irradiation. The fault indicator will identify a filter or foil error.

(4) Stray Radiation in the Useful Beam. For equipment manufactured after the effective date of these rules, the registrant shall determine during acceptance testing, or obtain from the manufacturer, data sufficient to ensure that x-ray stray radiation in the useful electron beam, absorbed dose at the surface during x-ray irradiation and stray neutron radiation in the useful x-ray beam meet applicable acceptance criteria.

(5) Beam Monitors. Therapeutic radiation machines subject to R313-30-7 shall be provided with redundant beam monitoring systems. The sensors for these systems shall be fixed in the useful beam during treatment to indicate the dose monitor unit rate, and to monitor other beam parameters.

(a) Equipment manufactured after the effective date of these rules shall be provided with at least two independently powered integrating dose meters. Alternatively, common elements may be used if the production of radiation is terminated upon failure of a common element.

(b) Equipment manufactured on or before the effective date of these rules shall be provided with at least one radiation detector. This detector shall be incorporated into a useful beam monitoring system;

(c) The detector and the system into which that detector is incorporated shall meet the following requirements:

(i) Detectors shall be removable only with tools and, if movable, shall be interlocked to prevent incorrect positioning;

(ii) Detectors shall form part of a beam monitoring system from whose readings in dose monitor units the absorbed dose at a reference point can be calculated;

(iii) The beam monitoring systems shall be capable of independently monitoring, interrupting, and terminating irradiation; and

(iv) For equipment manufactured after the effective date of these rules, the design of the beam monitoring systems shall ensure that the:

(A) Malfunctioning of one system shall not affect the correct functioning of the secondary system; and

(B) Failure of an element common to both systems which could affect the correct function of both systems shall terminate irradiation or prevent the initiation of radiation.

(v) Beam monitoring systems shall have a legible display at the treatment control panel. For equipment manufactured after the effective date of these rules, displays shall:

(A) Maintain a reading until intentionally reset;

(B) Have only one scale and no electrical or mechanical scale multiplying factors;

(C) Utilize a design so that increasing dose monitor units are displayed by increasing numbers; and

(D) In the event of power failure, the dose monitor units delivered up to the time of failure, or the beam monitoring information required in R313-30-7(5)(c)(v)(C) displayed at the control panel at the time of failure shall be retrievable in at least one system for a 20 minute period of time.

(6) Beam Symmetry.

(a) Bent-beam linear accelerators subject to R313-30-7 shall be provided with auxiliary devices to monitor beam symmetry;

(b) The devices referenced in R313-30-7(6)(a) shall be able to detect field asymmetry greater than ten percent; and

(c) The devices referenced in R313-30-7(6)(a) shall be configured to terminate irradiation if the specifications in R313-30-7(6)(b) can not be maintained.

(7) Selection and Display of Dose Monitor Units.

(a) Irradiation shall not be possible until a selection of a number of dose monitor units has been made at the treatment control panel;

(b) The preselected number of dose monitor units shall be displayed at the treatment control panel until reset manually for the next irradiation;

(c) After termination of irradiation, it shall be necessary to reset the dosimeter display before subsequent treatment can be initiated; and

(d) For equipment manufactured after the effective date of these rules, after termination of irradiation, it shall be necessary for the operator to reset the preselected dose monitor units before irradiation can be initiated.

(8) Air Kerma Rate and Absorbed Dose Rate. For equipment manufactured after the effective date of these rules, a system shall be provided from whose readings the air kerma rate or absorbed dose rate at a reference point can be calculated. The radiation detectors specified in R313-30-7(5) may form part of this system. In addition:

(a) The dose monitor unit dose rate shall be displayed at the treatment control panel;

(b) If the equipment can deliver an air kerma rate or absorbed dose rate at the nominal treatment distance more than twice the maximum value specified by the manufacturer, a device shall be provided which terminates irradiation when the air kerma rate or absorbed dose rate exceeds a value twice the specified maximum. The dose rate at which the irradiation will be terminated shall be a record maintained by the registrant;

(c) If the equipment can deliver, under any fault condition, an air kerma rate or absorbed dose rate at the nominal treatment distance more than ten times the maximum value specified by the manufacturer, a device shall be provided to prevent the air kerma rate or absorbed dose rate anywhere in the radiation field from exceeding twice the specified maximum value and to terminate irradiation if the excess absorbed dose at the nominal treatment distance exceeds 4 Gy (400 rad); and

(d) For therapeutic radiation machines, the registrant shall

determine, or obtain from the manufacturer, the maximum values specified in R313-30-7(8)(b) and R313-30-7(8)(c) for the specified operating conditions. Records of these maximum values shall be maintained at the installation for inspection by representatives of the Executive Secretary.

(9) Termination of Irradiation by the Beam Monitoring System or Systems During Stationary Beam Radiation Therapy.

(a) Primary systems shall terminate irradiation when the preselected number of dose monitor units has been detected by the system;

(b) If the original design of the equipment included a secondary dose monitoring system, that system shall be capable of terminating irradiation when not more than 15 percent or 40 dose monitor units above the preselected number of dose monitor units set at the control panel has been detected by the secondary dose monitoring system; and

(c) For equipment manufactured after the effective date of these rules, an indicator on the control panel shall show which monitoring system has terminated irradiation.

(10) Termination Switches. It shall be possible to terminate irradiation and equipment movement or go from an interruption condition to termination condition at any time from the operator's position at the treatment control panel.

(11) Interruption Switches. If a therapeutic radiation machine has an interrupt mode, it shall be possible to interrupt irradiation and equipment movements at any time from the treatment control panel. Following an interruption, it shall be possible to restart irradiation by operator action without a reselection of operating conditions. If a change is made of a pre-selected value during an interruption, irradiation and equipment movements shall be automatically terminated.

(12) Timer. A suitable irradiation control device shall be provided to terminate the irradiation after a preset time interval.

(a) A timer shall be provided which has a display at the treatment control panel. The timer shall have a preset time selector and an elapsed time indicator;

(b) The timer shall be a cumulative timer which activates with an indication of "BEAM-ON" and retains its reading after irradiation is interrupted or terminated. After irradiation is terminated and before irradiation can be reinitiated, it shall be necessary to reset the elapsed time indicator;

(c) The timer shall terminate irradiation when a preselected time has elapsed, if the dose monitoring systems have not previously terminated irradiation.

(13) Selection of Radiation Type. Equipment capable of both x-ray therapy and electron therapy shall meet the following additional requirements:

(a) Irradiation shall not be possible until a selection of radiation type (x-rays or electrons) has been made at the treatment control panel;

(b) The radiation type selected shall be displayed at the treatment control panel before and during irradiation;

(c) An interlock system shall be provided to ensure that the equipment can principally emit only the radiation type which has been selected;

(d) An interlock system shall be provided to prevent irradiation with x-rays, except to obtain a verification film, when electron applicators are fitted;

(e) An interlock system shall be provided to prevent irradiation with electrons when accessories specific for x-ray therapy are fitted; and

(f) An interlock system shall be provided to prevent irradiation if selected operations carried out in the treatment room do not agree with the selected operations carried out at the treatment control panel.

(14) Selection of Energy. Equipment capable of generating radiation beams of different energies shall meet the following requirements:

(a) Irradiation shall not be possible until a selection of energy has been made at the treatment control panel;

(b) The nominal energy value selected shall be displayed at the treatment control panel before and during irradiation; and

(c) Irradiation shall not be possible until the appropriate flattening filter or scattering foil for the selected energy is in its proper location.

(15) Selection of Stationary Beam Radiation Therapy or Moving Beam Radiation Therapy. Therapeutic radiation machines capable of both stationary beam radiation therapy and moving beam radiation therapy shall meet the following requirements:

(a) Irradiation shall not be possible until a selection of stationary beam radiation therapy or moving beam radiation therapy has been made at the treatment control panel;

(b) The mode of operation shall be displayed at the treatment control panel;

(c) An interlock system shall be provided to ensure that the equipment can operate only in the mode which has been selected;

(d) An interlock system shall be provided to prevent irradiation if a selected parameter in the treatment room does not agree with the selected parameter at the treatment control panel;

(e) Moving beam radiation therapy shall be controlled to obtain the selected relationships between incremental dose monitor units and incremental angle of movement. For equipment manufactured after the effective date of these rules:

(i) An interlock system shall be provided to terminate irradiation if the number of dose monitor units delivered in increments of ten degrees of rotation or one centimeter of motion differs by more than 20 percent from the selected value;

(ii) Where angle terminates the irradiation in moving beam radiation therapy, the dose monitor units shall differ by less than five percent from the dose monitor unit value selected;

(iii) An interlock shall be provided to prevent motion of more than five degrees or one centimeter beyond the selected limits during moving beam radiation therapy;

(iv) For equipment manufactured after the effective date of these rules, an interlock shall be provided to require that a selection of direction be made at the treatment control panel in units which are capable of both clockwise and counter-clockwise moving beam radiation therapy.

(v) Moving beam radiation therapy shall be controlled with both primary position sensors and secondary position sensors to obtain the selected relationships between incremental dose monitor units and incremental movement.

(f) Where the beam monitor system terminates the irradiation in moving beam radiation therapy, the termination of irradiation shall be as required by R313-30-7(9); and

(g) For equipment manufactured after the effective date of these rules, an interlock system shall be provided to terminate irradiation if movement:

(i) Occurs during stationary beam radiation therapy; or

(ii) Does not start or stops during moving beam radiation therapy unless the stoppage is a preplanned function.

(16) Facility Design Requirements for Therapeutic Radiation Machines Operating above 500 kV. In addition to shielding adequate to meet requirements of R313-30-9, the following design requirements are made:

(a) Protective Barriers. Protective barriers shall be fixed, except for access doors to the treatment room or movable beam interceptors;

(b) Control Panel. In addition to other requirements specified in R313-30, the control panel shall also:

(i) Be located outside the treatment room;

(ii) Provide an indication of whether electrical power is available at the control panel and if activation of the radiation is possible;

(iii) Provide an indication of whether radiation is being produced; and

(iv) Include an access control device which will prevent unauthorized use of the therapeutic radiation machine;

(c) Viewing Systems. Windows, mirrors, closed-circuit television or an equivalent viewing system shall be provided to permit continuous observation of the patient following positioning and during irradiation and shall be so located that the operator may observe the patient from the treatment control panel. The therapeutic radiation machine shall not be used for patient irradiation unless at least one viewing system is operational;

(d) Aural Communications. Provision shall be made for continuous two-way aural communication between the patient and the operator at the control panel. The therapeutic radiation machine shall not be used for irradiation of patients unless continuous two-way aural communication is possible;

(e) Room Entrances. Treatment room entrances shall be provided with warning lights in a readily observable position near the outside of access doors, which will indicate when the useful beam is "ON;"

(f) Entrance Interlocks. Interlocks shall be provided so that access controls are activated before treatment can be initiated or continued. If the radiation beam is interrupted by an access control, it shall not be possible to restore the machine to operation without closing the door and reinitiating irradiation by manual action at the control panel;

(g) Beam Interceptor Interlocks. If the shielding material in a protective barrier requires the presence of a beam interceptor to ensure compliance with R313-30-301(1), interlocks shall be provided to prevent the production of radiation, unless the beam interceptor is in place, whenever the useful beam is directed at the designated barriers;

(h) Emergency Cutoff Switches. At least one emergency power cutoff switch shall be located in the radiation therapy room and shall terminate equipment electrical power including radiation and mechanical motion. This switch is in addition to the termination switch required by R313-30-7(11). Emergency power cutoff switches shall include a manual reset so that the therapeutic radiation machine cannot be restarted from the unit's control panel without resetting the emergency cutoff switch. Alternatively, power cannot be restarted without pressing a RESET button in the treatment room after resetting the power breaker, and the operator shall check the treatment room and patient prior to turning the power back on;

(i) Safety Interlocks. Safety interlocks shall be designed so that defects or component failures in the safety interlock system prevent or terminate operation of the therapeutic radiation machine; and

(j) Surveys for Residual Radiation. Surveys for residual activity shall be conducted on therapeutic radiation machines capable of generating photon and electron energies above 10 MV prior to machining, removing, or working on therapeutic radiation machine components which may have become activated due to photo-neutron production.

(17) Radiation Therapy Physicist Support.

(a) The services of a Radiation Therapy Physicist shall be required in facilities having therapeutic radiation machines with energies of 500 kV and above. The Radiation Therapy Physicist shall be responsible for:

(i) Full calibrations required by R313-30-7(19) and protection surveys required by R313-30-4(1);

(ii) Supervision and review of dosimetry;

(iii) Beam data acquisition and transfer for computerized dosimetry, and supervision of its use;

(iv) Quality assurance, including quality assurance check review required by R313-30-7(20)(e) of these rules;

(v) Consultation with the authorized user in treatment planning, as needed; and

(vi) Perform calculations and assessments regarding misadministrations.

(b) If the Radiation Therapy Physicist is not a full-time employee of the registrant, the operating procedures required by R313-30-7(18) shall also specifically address how the Radiation Therapy Physicist is to be contacted for problems or emergencies, as well as the specific actions to be taken until the Radiation Therapy Physicist can be contacted.

(18) Operating Procedures.

(a) No individual, other than the patient, shall be in the treatment room during treatment or during an irradiation for testing or calibration purposes;

(b) Therapeutic radiation machines shall not be made available for medical use unless the requirements of R313-30-4(1), R313-30-7(19) and R313-30-7(20) have been met;

(c) Therapeutic radiation machines, when not in operation, shall be secured to prevent unauthorized use;

(d) If a patient must be held in position during treatment, mechanical supporting or restraining devices shall be used;

(e) A copy of the current operating and emergency procedures shall be maintained at the therapeutic radiation machine control console; and

(f) When adjustable beam limiting devices or beam limiting devices that do not contact the skin are used, the position and shape of the radiation field shall be indicated by a light field.

(19) Full Calibration Measurements.

(a) Full calibration of a therapeutic radiation machine subject to R313-30-7 shall be performed by, or under the direct supervision of, a Radiation Therapy Physicist:

(i) Before the first medical use following installation or reinstallation of the therapeutic radiation machine;

(ii) Annually. The intervals should not exceed 12 months and shall not exceed 13 months; and

(iii) Before medical use under the following conditions:

(A) Whenever quality assurance check measurements indicate that the radiation output differs by more than five percent from the value obtained at the last full calibration and the difference cannot be easily reconciled; and

(B) Following component replacement, major repair, or modification of components, if the appropriate Quality Assurance checks demonstrate that the characteristics of the radiation beam have been significantly affected as determined by a Radiation Therapy Physicist. The Quality Assurance checks shall be performed by, or under the direct supervision of a Radiation Therapy Physicist. The determination of the need for a full calibration shall be made by a Radiation Therapy Physicist.

(iv) Notwithstanding the requirements of R313-30-7(19)(a)(iii):

(A) Full calibration of therapeutic radiation machines with multi-energy and multi-mode capabilities is required only for those modes and energies that are not within their range and the difference cannot be easily reconciled; and

(B) If the repair, replacement or modification does not affect all modes and energies, full calibration shall be performed on the effected mode or energy if the Quality Assurance checks demonstrate that the characteristics of the radiation beam have been significantly affected as determined by a Radiation Therapy Physicist. The Quality Assurance checks shall be performed by, or under the direct supervision of, a Radiation Therapy Physicist. The determination of the need for a full calibration shall be made by a Radiation Therapy Physicist. The remaining energies or modes may be validated with quality assurance check procedures against the criteria in R313-30-7(19)(a)(iii)(A).

(b) To satisfy the requirement of R313-30-7(19)(a), full calibration shall include measurements required for annual calibration by American Association of Physicists in Medicine (AAPM) Report 46, "Comprehensive Quality Assurance for Radiation Oncology," 1994 ed., which is adopted and incorporated by reference;

(c) The registrant shall use the dosimetry system described in R313-30-8(6) to measure the radiation output for one set of exposure conditions. The remaining radiation measurements required in R313-30-7(19)(b) may then be made using a dosimetry system that indicates relative dose rates; and

(d) The registrant shall maintain a record of calibrations for the duration of the registration. The record shall include the date of the calibration, the manufacturer's name, model number, and serial number for the therapeutic radiation machine, the model numbers and serial numbers of the instruments used to calibrate the therapeutic radiation machine, and the signature of the Radiation Therapy Physicist responsible for performing the calibration.

(20) Periodic Quality Assurance Checks.

(a) Periodic quality assurance checks shall be performed on therapeutic radiation machines subject to R313-30-7. These checks should be performed at intervals not to exceed those intervals recommended in American Association of Physicists in Medicine (AAPM) Report 46, "Comprehensive Quality Assurance for Radiation Oncology," 1994 ed., which is adopted and incorporated by reference.

(i) Determination of parameters for central axis radiation output shall be done at least weekly. The interval shall not exceed ten days.

(ii) The interval at which periodic quality assurance checks are to be performed shall be determined by the Radiation Therapy Physicist and shall be documented in the registrant's quality management program. The interval for a specific performance check may be based on the history of that performance check for a particular machine. The interval may be increased above the recommended limits only if the Radiation Therapy Physicist determines the increase is justified based on the history of the performance check for that machine or a machine of the same manufacturer and the same model.

(iii) If the performance check demonstrates a need to decrease the interval, the Radiation Therapy Physicist shall decide if the interval should be decreased. The decreased interval shall be continued until the performance check demonstrates that the decreased interval is not necessary.

(b) To satisfy the requirement of R313-30-7(20)(a), quality assurance checks shall include determination of central axis radiation output and shall include a representative sampling of periodic quality assurance checks contained in American Association of Physicists in Medicine (AAPM) Report 46, "Comprehensive Quality Assurance for Radiation Oncology," 1994 ed., which is adopted and incorporated by reference.

(i) A representative sampling shall include those referenced periodic quality assurance checks necessary to assure that the radiation beam and alignment parameters for all therapy machines and modes of operation are within limits prescribed by AAPM Report 46.

(ii) The intervals for a representative sampling of referenced periodic quality assurance checks should not exceed 12 consecutive months and shall not exceed 13 consecutive months.

(c) The registrant shall use a dosimetry system which has been inter-compared semi-annually. The intervals should not exceed six months and shall not exceed seven months, with a dosimetry system described in R313-30-8(6)(a) to make the periodic quality assurance checks required in R313-30-7(20)(a)(i);

(d) The registrant shall perform periodic quality assurance checks required by R313-30-7(20)(a) in accordance with procedures established by the Radiation Therapy Physicist;

(e) The registrant shall review the results of periodic radiation output checks according to the following procedures:

(i) The authorized user and Radiation Therapy Physicist shall be immediately notified if a parameter is not within its acceptable range. The therapeutic radiation machine shall not be made available for subsequent medical use until the Radiation Therapy Physicist has determined that all parameters are within their acceptable range;

(ii) If periodic radiation output check parameters appear to be within their acceptable range, the periodic radiation output check shall be reviewed and signed by either the authorized user or Radiation Therapy Physicist within two weeks;

(iii) The Radiation Therapy Physicist shall review and sign the results of radiation output quality assurance checks at intervals not to exceed one month; and

(iv) Other Quality Assurance checks shall be reviewed at intervals specified in the Quality Management Program, as required by R313-30-5.

(f) Therapeutic radiation machines subject to R313-30-7 shall have safety quality assurance checks of external beam radiation therapy facilities performed weekly at intervals not to exceed ten days;

(g) To satisfy the requirement of R313-30-7(20)(f), safety quality assurance checks shall ensure proper operation of:

(i) Electrical interlocks at external beam radiation therapy room entrances;

(ii) Proper operation of the "BEAM-ON", interrupt and termination switches;

(iii) Beam condition indicator lights on the access doors, control console, and in the radiation therapy room;

(iv) Viewing and aural communication systems;

(v) Electrically operated treatment room doors from inside and outside the treatment room;

(vi) At least one emergency power cutoff switch. If more than one emergency power cutoff switch is installed and not all switches are tested at once, switches shall be tested on a rotating basis. Safety quality assurance checks of the emergency power cutoff switches may be conducted at the end of the treatment day in order to minimize possible stability problems with the therapeutic radiation machine.

(h) The registrant shall promptly repair a system identified in R313-30-7(20)(g) that is not operating properly; and

(i) The registrant shall maintain a record of quality assurance checks required by R313-30-7(20)(a) and R313-30-7(20)(g) for three years. The record shall include the date of the quality assurance check, the manufacturer's name, model number, and serial number for the therapeutic radiation machine, the manufacturer's name, model number and serial number of the instruments used to measure the radiation output of the therapeutic radiation machine, and the signature of the individual who performed the periodic quality assurance check.

R313-30-8. Calibration and Check of Survey Instruments and Dosimetry Equipment.

(1) The registrant shall ensure that the survey instruments used to show compliance with R313-30 have been calibrated before first use, at intervals not to exceed 12 months, and following repair.

(2) To satisfy the requirements of R313-30-8(1), the registrant shall:

(a) Calibrate required scale readings up to 10 mSv (1000 mrem) per hour with an appropriate radiation source that is traceable to the National Institute of Standards and Technology (NIST);

(b) Calibrate at least two points on the scales to be calibrated. These points should be at approximately 1/3 and 2/3 of scale rating; and

(3) To satisfy the requirements of R313-30-8(2), the registrant shall:

(a) Consider a point as calibrated if the indicated dose rate differs from the calculated dose rate by not more than ten percent; and

(b) Consider a point as calibrated if the indicated dose rate differs from the calculated dose rate by not more than 20 percent if a correction factor or graph is conspicuously attached to the instrument.

(4) The registrant shall retain a record of calibrations required in R313-30-8(1) for three years. The record shall include:

(a) A description of the calibration procedure; and

(b) A description of the source used and the certified dose rates from the source, and the rates indicated by the instrument being calibrated, the correction factors deduced from the calibration data, the signature of the individual who performed the calibration, and the date of calibration.

(5) The registrant may obtain the services of individuals licensed by the Board, the U.S. Nuclear Regulatory Commission, an Agreement State, or a Licensing State to perform calibrations of survey instruments. Records of calibrations which contain information required by R313-30-8(4) shall be maintained by the registrant.

(6) Dosimetry Equipment.

(a) The registrant shall have a calibrated dosimetry system available for use. The system shall have been calibrated for by the National Institute for Standards and Technology (NIST) or by an American Association of Physicists in Medicine (AAPM) Accredited Dosimetry Calibration Laboratory (ADCL). The calibration shall have been performed within 24 months prior to use and after servicing that may have affected system calibration.

(i) For beams with energies greater than 1 MV (1 MeV), the dosimetry system shall have been calibrated for Cobalt-60;

(ii) For beams with energies equal to or less than 1 MV (1 MeV), the dosimetry system shall have been calibrated at an energy or energy range appropriate for the radiation being used.

(b) The registrant shall have available for use a dosimetry system for quality assurance check measurements. To meet this requirement, the system may be compared with a system that has been calibrated in accordance with R313-30-8(6)(a). This comparison shall have been performed within the previous 12 months (six months if the dosimetry system is an ionization chamber) and after servicing that may have affected system calibration. The quality assurance check system may be the same system used to meet the requirement in R313-30-8(6)(a);

(c) The registrant shall maintain a record of dosimetry system calibration, intercomparison, and comparison for the duration of the license and registration. For calibrations, intercomparisons, or comparisons, the record shall include the date, the model numbers and serial numbers of the instruments that were calibrated, intercompared, or compared as required by R313-30-8(6)(a) and R313-30-8(6)(b), the correction factors that were determined, the names of the individuals who performed the calibration, intercomparison, or comparison, and evidence that the calibration, intercomparison, or comparison was performed by, or under the direct supervision of, a Radiation Therapy Physicist.

R313-30-9. Shielding and Safety Design Requirements.

(1) Therapeutic radiation machines subject to R313-30-6 or R313-30-7 shall be provided with the primary and secondary

barriers that are necessary to ensure compliance with R313-15-201 and R313-30-301 of these rules.

(2) Facility design information for new installations of a therapeutic radiation machine or installations of a therapeutic radiation machine of higher energy into a room not previously approved for that energy shall be submitted for approval by the Executive Secretary prior to actual installation of the therapeutic radiation machine. The minimum facility design information that must be submitted is contained in R313-30-10.

R313-30-10. Information on Radiation Shielding Required for Plan Reviews.

(1) Therapeutic Radiation Machines

(a) Basic facility information including: name, telephone number and Department registration number of the individual responsible for preparation of the shielding plan; name and telephone number of the facility supervisor; and the street address, including room number, of the external beam radiation therapy facility. The plan should also indicate whether this is a new structure or a modification to existing structures.

(b) Wall, floor, and ceiling areas struck by the useful beam shall have primary barriers. For an adjacent area that is normally unoccupied, barrier thicknesses may be less than the required thickness, if:

(i) That area where the exposure rates and exposures exceed the limits specified in R313-15-301(1) is permanently fenced or walled to prevent access;

(ii) The appropriate warning signs are posted at appropriate intervals and locations on the fence or wall;

(iii) The exposure rates and exposures outside the fence or wall are less than the limits specified in R313-15-301(1);

(iv) Access to the area is controlled by the operator, and once access is gained, the therapeutic radiation machine cannot be operated until the area has been cleared and access is again controlled by the operator;

(v) The ceiling is of sufficient thickness to reduce exposure due to skyshine, so that the exposure rates and exposures surrounding the facility are less than the limits specified in R313-15-301(1); and

(vi) The primary barrier is of sufficient thickness to ensure that the exposure rates and exposures from the primary beam in spaces in adjacent buildings are less than the limits specified in R313-15-301(1).

(c) Secondary barriers shall be provided in wall, floor, and ceiling areas not having primary barriers.

(2) Therapeutic Radiation Machines up to 150 kV (photons only). In addition to the requirements listed in R313-30-10(1), therapeutic radiation machine facilities which produce only photons with a maximum energy less than or equal to 150 kV shall submit shielding plans which contain, as a minimum, the following additional information:

(a) Equipment specifications, including the manufacturer and model number of the therapeutic radiation machine, as well as the maximum technique factors.

(b) Maximum design workload for the facility including total weekly radiation output, expressed in gray (rad) or air kerma at one meter, total beam-on time per day or week, the average treatment time per patient, along with the anticipated number of patients to be treated per day or week.

(c) A facility blueprint or drawing indicating: the scale of the blueprint or drawing; direction of North; normal location of the therapeutic radiation machine's radiation ports; the port's travel and traverse limits; general directions of the useful beam; locations of windows and doors; and the location of the therapeutic radiation machine control panel. If the control panel is located inside the external beam radiation therapy treatment room, the location of the operator's booth shall be noted on the plan and the operator's station at the control panel shall be behind a protective barrier sufficient to ensure compliance with R313-15-101 of these rules.

(d) The structural composition and thickness or the lead or concrete equivalent of walls, doors, partitions, floor, and ceiling of the rooms concerned.

(e) The type of occupancy of adjacent areas inclusive of space above and below the rooms concerned. If there is an exterior wall, show distance to the closest areas where it is likely that individuals may be present.

(f) At least one example calculation which shows the methodology used to determine the amount of shielding required for the physical conditions; that is the primary and secondary or leakage barriers, restricted and unrestricted areas, entry doors; and shielding material in the facility.

(i) If commercial software is used to generate shielding requirements, please also identify the software used and the version or revision date.

(ii) If the software used to generate shielding requirements is not in the open literature, please also submit quality control sample calculations to verify the result obtained with the software.

(3) Therapeutic Radiation Machines over 150 kV. In addition to the requirements listed in R313-30-10(1), therapeutic radiation machine facilities which produce photons with a maximum energy in excess of 150 kV and electrons and protons or other subatomic particles shall submit shielding plans which contain, as a minimum, the following additional information:

(a) Equipment specifications including the manufacturer and model number of the therapeutic radiation machine, and gray (rad) at the isocenter and the energies and types of radiation produced, that is photon and electron. The source to isocenter distance shall be specified.

(b) Maximum design workload for the facility including total weekly radiation output, expressed in gray (rad) at one meter, total beam-on time per day or week, the average treatment time per patient, along with the anticipated number of patients to be treated per day or week.

(c) Facility blueprint or drawing, including both floor plan and elevation views, indicating relative orientation of the therapeutic radiation machine; scale; types; thickness and minimum density of shielding materials; direction of North; the locations and size of penetrations through shielding barriers, ceiling, walls and floor; as well as details of the doors and maze.

(d) The structural composition and thickness or concrete equivalent of walls, doors, partitions, floor, and ceiling of the rooms concerned.

(e) The type of occupancy of adjacent areas inclusive of space above and below the rooms concerned. If there is an exterior wall, show distance to the closest areas where it is likely

that individuals may be present.

(f) Description of assumptions that were used in shielding calculations including, but not limited to; design energy, for example a room may be designed for 6 MV unit although only a 4 MV unit is currently proposed; workload; presence of integral beam-stop in unit; occupancy and uses of adjacent areas; fraction of time that useful beam will intercept permanent barriers, walls, floor and ceiling; and "allowed" radiation exposure in both restricted and unrestricted areas.

(g) At least one example calculation which shows the methodology used to determine the amount of shielding required for the physical conditions; that is the primary and secondary or leakage barriers, restricted and unrestricted areas, small angle scatter, entry doors and maze; and shielding material in the facility.

(i) If commercial software is used to generate shielding requirements, also identify the software used and the version or revision date.

(ii) If the software used to generate shielding requirements is not in the open literature, also submit quality control sample calculations to verify the result obtained with the software.

(4) Neutron Shielding. In addition to the requirements listed in R313-30-10(3), therapeutic radiation machine facilities which are capable of operating above 10 MV shall submit shielding plans which contain, as a minimum, the following additional information:

(a) The structural composition, thickness, minimum density and location of neutron shielding material.

(b) Description of assumptions that were used in neutron shielding calculations including, but not limited to, neutron spectra as a function of energy, neutron flux rate, absorbed dose and dose equivalent, due to neutrons, in both restricted and unrestricted areas.

(c) At least one example calculation which shows the methodology used to determine the amount of neutron shielding required for the physical conditions, that is, restricted and unrestricted areas, entry doors and maze and neutron shielding material utilized in the facility.

(i) If commercial software is used to generate shielding requirements, also identify the software used and the version or revision date.

(ii) If the software used to generate shielding requirements is not in the open literature, also submit quality control sample calculations to verify the result obtained with the software.

(d) The methods and instrumentation which will be used to verify the adequacy of neutron shielding installed in the facility.

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R313. Environmental Quality, Radiation Control.
R313-38. Radiation Safety Requirements for Wireline Service Operation and Subsurface Tracer Studies.
R313-38-1. Purpose and Authority.

R313-38 establishes radiation safety requirements for persons using sources of radiation for wireline service operations including mineral logging, radioactive markers, and subsurface tracer studies. The requirements of R313-38 are in addition to, and not in substitution for, the requirements of R313-12, R313-15, R313-16, R313-18 and R313-19. The rules in R313-38 apply to all licensees or registrants who use sources of radiation for wireline service operations including mineral logging, radioactive markers, or subsurface tracer studies.

R313-38-2. Definitions.

As used in R313-38:

"Field station" means a facility where radioactive sources may be stored or used and from which equipment is dispatched to temporary job sites.

"Fresh water aquifer" means a geologic formation that is capable of yielding fresh water to a well or spring.

"Injection tool" means a device used for controlled subsurface injection of radioactive tracer material.

"Irretrievable well logging source" means a sealed source containing licensed material that is pulled off or not connected to the wireline that suspends the source in the well and for which all reasonable effort at recovery has been expended.

"Logging assistant" means an individual who, under the personal supervision of a logging supervisor, handles sources of radiation or tracers that are not in logging tools or shipping containers or who performs surveys required by R313-38-67.

"Logging supervisor" means an individual who uses sources of radiation or provides personal supervision in the use of sources of radiation at a temporary job site and who is responsible to the licensee or registrant for assuring compliance with the Utah Radiation Control Rules and the conditions of the license.

"Logging tool" means a device used subsurface to perform well logging.

"Personal supervision" means guidance and instruction by a logging supervisor, who is physically present at a temporary job site, who is in personal contact with logging assistants, and who can give immediate assistance.

"Radioactive marker" means radioactive material placed subsurface or on a structure intended for subsurface use for the purpose of depth determination or direction orientation. For purposes of R313-38, this term includes radioactive collar markers and radioactive iron nails.

"Safety review" means a periodic review provided by the licensee for its employees on radiation safety aspects of well logging. The review may include, as appropriate, the results of internal inspections, new procedures or equipment, accidents or errors that have been observed, and opportunities for employees to ask safety questions.

"Source holder" means a housing or assembly into which a sealed source is placed to facilitate the handling and use of the source in well logging.

"Subsurface tracer study" means the release of unsealed licensed material or a substance labeled with licensed material in a single well for the purpose of tracing the movement or position of the material or substance in the well or adjacent formation.

"Surface casing for protecting fresh water aquifers" means a pipe or tube used as a lining in a well to isolate fresh water aquifers from the well.

"Uranium sinker bar" means a weight containing depleted uranium used to pull a logging tool toward the bottom of a well.

"Well-bore" means a drilled hole in which wireline service operations and subsurface tracer studies are performed.

"Well logging" means the lowering and raising of measuring devices or tools which contain sources of radiation into well-bores or cavities for the purpose of obtaining information about the well or adjacent geological formations.

"Wireline" means a cable containing one or more electrical conductors which is used to lower and raise logging tools in the well-bore.

"Wireline service operation" means any evaluation or mechanical service which is performed in the well-bore using devices on a wireline.

R313-38-13. Specific Licenses for Well Logging.

The Executive Secretary will approve an application for a specific license for the use of licensed material in well logging if the applicant meets the following requirements:

(1) The applicant shall satisfy the general requirements specified in R313-22-34 and the special requirements contained in R313-38.

(2) The applicant shall develop a program for training logging supervisors and logging assistants and submit to the Executive Secretary a description of this program which specifies the:

(a) initial training;

(b) on-the-job training;

(c) annual safety reviews provided by the licensee;

(d) methods that the applicant will use to evaluate the logging supervisor's knowledge and understanding of and ability to comply with these rules and licensing requirements and the applicant's operating and emergency procedures; and

(e) methods that the applicant will use to evaluate the logging assistant's knowledge and understanding of and ability to comply with the applicant's operating and emergency procedures.

(3) The applicant shall submit to the Executive Secretary written operating and emergency procedures, as described in R313-38-63, or an outline or summary of the procedures that includes the important radiation safety aspects of the procedures.

(4) The applicant shall establish and submit to the Executive Secretary its program for annual inspections of the job performance of logging supervisors to ensure that these rules, license requirements, and the applicant's operating and emergency procedures are followed. Inspection records must be retained for three years after annual internal inspections.

(5) The applicant shall submit a description of its overall organizational structure as it applies to the radiation safety responsibilities in well logging, including specified delegations of authority and responsibility.

(6) If an applicant wants to perform leak testing of sealed

sources, the applicant shall identify the manufacturers and the model numbers of the leak test kits to be used. If the applicant wants to analyze its own wipe samples, the applicant shall establish procedures to be followed and submit a description of these procedures to the Executive Secretary. The description must include the:

(1) instruments to be used;

(2) methods of performing the analysis; and

(3) pertinent experience of the person who will analyze the wipe samples.

R313-38-15. Agreement With Well Owner or Operator.

(1) A licensee may perform well logging with a sealed source only after the licensee has a written agreement with the employing well owner or operator. The following requirements shall be met and the written agreement shall identify who will be responsible for meeting these requirements.

(a) If a sealed source becomes lodged in a well, a reasonable effort will be made to recover it.

(b) A person may not attempt to recover a sealed source in a manner which, in the licensee's opinion, could result in its rupture.

(c) The radiation monitoring required in R313-38-69(3) will be performed.

(d) If the environment, equipment, or personnel are contaminated with licensed material, they must be decontaminated before release from the site or release for unrestricted use.

(e) If the sealed source is classified as irretrievable after reasonable efforts at recovery have been expended, the following requirements shall be implemented within 30 days:

(i) Irretrievable well logging sources must be immobilized and sealed in place with a cement plug.

(ii) A mechanical device to prevent inadvertent intrusion on the source must be set at some point in the well above the cement plug, unless the cement plug and source are not accessible to subsequent drilling operations.

(iii) A permanent identification plaque, constructed of long lasting material such as stainless steel, brass, bronze, or monel, must be mounted at the surface of the well, unless the mounting of the plaque is not practical. The size of the plaque must be at least 17 centimeters (seven inches) square and three millimeters (one-eighth inch) thick. The plaque must contain:

(A) the word "CAUTION";

(B) the radiation symbol (the color requirement in R313-15-901(1) need not be met);

(C) the date the source was abandoned;

(D) the name of the well owner or well operator, as appropriate;

(E) the well name and well identification number or other designation;

(F) an identification of the sealed source by radionuclide and quantity;

(G) the depth of the source and depth of the top of the plug; and

(H) an appropriate warning, such as, "DO NOT RE-ENTER THIS WELL."

(2) The licensee shall retain a copy of the written agreement for three years after the completion of the well logging operation.

(3) On a case by case basis, a licensee may apply for Executive Secretary approval pursuant to R313-38-91 of proposed procedures to abandon an irretrievable well logging source in a manner not otherwise authorized in R313-38-15(1)(e).

(4) A written agreement between the licensee and the well owner or operator is not required if the licensee and the well owner or operator are part of the same corporate structure or otherwise similarly affiliated. However, the licensee shall still otherwise meet the requirements in R313-38-15(1)(a) through (e).

R313-38-17. Request for Written Statements.

Licenses are issued with the condition that the licensee will, prior to expiration of the license, upon the Executive Secretary's request, submit written statements, signed under oath or affirmation, to enable the Executive Secretary to determine whether or not the license should be modified, suspended, or revoked.

R313-38-20. Limits on Levels of Radiation.

Sources of radiation shall be used, stored, and transported in a manner that meets the transportation requirements in R313-19-100 and the dose limitation requirements of R313-15.

R313-38-31. Labels, Security, and Transportation Precautions.

(1) Labels.

(a) The licensee may not use a source, source holder, or logging tool that contains licensed material unless the smallest component that is transported as a separate piece of equipment with the licensed material inside bears a durable, legible, and clearly visible marking or label. The marking or label must contain the radiation symbol specified in R313-15-901(1), without the color requirements, and the wording "CAUTION (or DANGER) RADIOACTIVE MATERIAL."

(b) The licensee may not use a container to store licensed material unless the container has securely attached to it a durable, legible, and clearly visible label. The label must contain the radiation symbol specified in R313-15-901(1), and the wording "CAUTION (or DANGER) RADIOACTIVE MATERIAL, NOTIFY CIVIL AUTHORITIES (or NAME OF COMPANY)."

(c) The licensee may not transport licensed material unless the material is packaged, labeled, marked, and accompanied with appropriate shipping papers in accordance with rules set out in R313-19-100.

(2) Security Precautions During Storage and Transportation.

(a) The licensee shall store sources containing licensed material in a storage container or transportation package. The container or package must be locked and physically secured to prevent tampering or removal of licensed material from storage by unauthorized personnel. The licensee shall store licensed material in a manner which will minimize danger from explosion or fire.

(b) The licensee shall lock and physically secure the transport package containing licensed material in the

transporting vehicle to prevent accidental loss, tampering, or unauthorized removal of the licensed material from the vehicle.

R313-38-33. Radiation Detection Instruments.

(1) The licensee or registrant shall keep a calibrated and operable radiation survey instrument capable of detecting beta and gamma radiation at field stations and temporary job sites to make the radiation surveys required by R313-38-67 and by R313-15-501. To satisfy this requirement, the radiation survey instrument must be capable of detecting dose rates over the range of one microsievert (0.1 mrem) per hour to at least 0.5 millisievert (50 mrem) per hour.

(2) The licensee or registrant shall have available additional calibrated and operable radiation detection instruments sensitive enough to detect the low radiation and contamination levels that could be encountered if a sealed source ruptured. The licensee or registrant may own the instruments or may have a procedure to obtain them quickly from a second party.

(3) The licensee or registrant shall have radiation survey instruments required under R313-38-33(1) calibrated:

(a) at intervals not to exceed six months and after instrument servicing;

(b) for linear scale instruments, at two points located approximately one-third and two-thirds of full-scale; for logarithmic scale instruments, at midrange of the decades, and at two points of at least one decade; and for digital instruments, at appropriate points; and

(c) so that an accuracy within plus or minus 20 percent of the calibration standard can be demonstrated on the scales.

(4) The licensee or registrant shall retain calibration records for a period of three years after the date of calibration for inspection by a representative of the Board or the Executive Secretary.

R313-38-35. Leak Testing of Sealed Sources.

(1) Testing and recordkeeping. Licensees using sealed sources of radioactive material shall have the sources tested for leakage. Records of leak test results shall be kept in units of kilobecquerels (uCi) and maintained for inspection by a representative of the Board or the Executive Secretary for three years after the leak test is performed.

(2) Method of Testing. Tests for leakage shall be performed only by persons specifically authorized to perform those tests by the Executive Secretary, the U.S. Nuclear Regulatory Commission, an Agreement State, or a Licensing State. The test sample shall be taken from the surface of the source, source holder, or from the surface of the device in which the source is stored or mounted and on which one might expect contamination to accumulate. The test sample shall be analyzed for radioactive contamination, and the analysis shall be capable of detecting the presence of 185 becquerels (0.005 uCi) of radioactive material on the test sample.

(3) Interval of Testing. Sealed sources of radioactive material shall be tested at intervals not to exceed six months or at alternative intervals approved by the Executive Secretary, an Agreement State, a Licensing State, or the U.S. Nuclear Regulatory Commission. In the absence of a certificate from a transferor indicating that a test has been made prior to the transfer, the sealed source shall not be put into use until tested. If it is suspected that a sealed source may be leaking, it shall be removed from service immediately and tested for leakage as soon as practical.

(4) Removal of Leaking or Contaminated Sources. If the test reveals the presence of 185 becquerels (0.005 uCi) or more of leakage or contamination, the licensee shall immediately withdraw the source from use and shall cause it to be decontaminated, repaired, or disposed of in accordance with R313-15. A report shall be filed with the Executive Secretary in accordance with R313-15-1208.

(5) Exemptions. The following sources are exempt from the periodic leak test requirements of R313-38-35(1) through (4):

(a) hydrogen-3 sources;

(b) sources of radioactive material with a half-life of 30 days or less;

(c) sealed sources of radioactive material in gaseous form;

(d) sources of beta or gamma emitting radioactive material with an activity of 3.7 megabecquerels (100 uCi) or less; and

(e) sources of alpha-emitting radioactive material with an activity of 370 kilobecquerels (10 uCi) or less.

R313-38-37. Physical Inventory.

At intervals not to exceed six months licensees or registrants shall conduct a physical inventory to account for all sources of radiation received and possessed under the license. The licensee or registrant shall retain records of the inventory for three years from the date of the inventory for inspection by a representative of the Board or the Executive Secretary. The inventory must indicate the quantity and kind of licensed material, the location of the licensed material, the date of the inventory, and the name of the individual conducting the inventory. Physical inventory records may be combined with leak test records.

R313-38-39. Records of Use.

(1) Licensees or registrants shall maintain records for uses of sources of radiation showing:

(a) the make, model number, and a serial number or a description of sources of radiation used;

(b) in the case of unsealed licensed material used for subsurface tracer studies, the radionuclide and quantity of activity used in a particular well and the disposition of unused tracer materials;

(c) the identity of the logging supervisor who is responsible for the sources of radiation and the identity of logging assistants present;

(d) the location and date of use.

(2) The licensee or registrant shall make the records required by R313-38-39(1) available for inspection by a representative of the Board or the Executive Secretary. The licensee or registrant shall retain the records for three years from the date of the recorded event.

R313-38-41. Design, Performance, and Certification Criteria for Sealed Sources Used in Downhole Operations.

(1) Sealed sources, except those containing radioactive material in gaseous form, used in downhole operations, and

manufactured after January 1, 1982, shall be certified by the manufacturer, or other testing organization acceptable to the Executive Secretary, to meet the following minimum criteria:

(a) be of doubly encapsulated construction;

(b) contain radioactive material whose chemical and physical forms are as insoluble and non-dispersible as practical; and

(c) the sealed source's prototype has been tested and found to maintain its integrity after the following tests:

(i) temperature: the test source must be held at -40 degrees Celsius for 20 minutes, 600 degrees Celsius for one hour, and then be subject to a thermal shock test with a temperature drop from 600 degrees Celsius to 20 degrees Celsius within 15 seconds.

(ii) impact test: a five kilogram steel hammer, 2.5 centimeter in diameter, must be dropped from a height of one meter onto the test source.

(iii) vibration test: the test source must be subject to a vibration from 25 hertz to 500 hertz at five gravitational units amplitude for 30 minutes.

(iv) puncture test: a one gram hammer and pin, 0.3 centimeter pin diameter, must be dropped from a height of one meter onto the test source.

(v) pressure test: has been individually pressure tested to at least 24,600 pounds per square inch absolute (1.695×10^8 pascals) without failure.

(2) For sealed sources, except those containing radioactive material in gaseous form, acquired after July 14, 1989, in the absence of a certificate from a transferor certifying that an individual sealed source meets the requirements of R313-38-41(1), the sealed source shall not be put into use until the determinations and testing have been performed.

(3) Sealed sources, except those containing radioactive material in gaseous form, used in downhole operations after July 14, 1989, shall be certified by the manufacturer, or other testing organization acceptable to the Executive Secretary, as meeting the sealed source performance requirements for oil well logging as contained in the American National Standard N43.6, "Classification of Sealed Radioactive Sources" in effect on July 14, 1989.

(4) Certification documents shall be maintained for inspection by a representative of the Board or the Executive Secretary for a period of two years after source disposal. If the source is abandoned downhole, the certification documents shall be maintained until the Executive Secretary authorizes disposition.

R313-38-43. Inspection, Maintenance, and Opening of a Source or Source Holder.

(1) Licensees or registrants shall visually check source holders, logging tools, and source handling tools, for defects before use, to ensure that the equipment is in good working condition and that required labeling is present. If defects are found, the equipment must be removed from service until repaired, and a record must be retained for three years after the defect is found.

(2) Licensees or registrants shall have a program for semiannual visual inspection and routine maintenance of source holders, logging tools, injection tools, source handling tools, storage containers, transport containers, and uranium sinker bars to ensure that the required labeling is legible and that no physical damage is visible. If defects are found, the equipment must be removed from service until repaired, and a record must be made listing: date, equipment involved, inspection and maintenance operations performed, defects found, and actions taken to correct the defects. These records must be retained for three years after the defect is found.

(3) Removal of a sealed source from a source holder or logging tool, and maintenance on sealed sources or holders in which sealed sources are contained may not be performed by the licensee unless a written procedure developed pursuant to R313-38-63 has been approved by the Executive Secretary, the Nuclear Regulatory Commission, or by an Agreement State.

(4) If a sealed source is stuck in the source holder, the licensee may not perform operations, like drilling, cutting, or chiseling, on the source holder unless the licensee is specifically approved by the Executive Secretary, the Nuclear Regulatory Commission or an Agreement State to perform this operation.

(5) The opening, repair, or modification of sealed sources must be performed by persons specifically approved to do so by the Executive Secretary, the Nuclear Regulatory Commission or an Agreement State.

R313-38-44. Handling Tools.

The licensee shall provide and require the use of tools that will assure remote handling of sealed sources other than low-activity calibration sources.

R313-38-45. Subsurface Tracer Studies.

(1) Protective gloves and appropriate protective clothing and equipment shall be used by personnel handling radioactive tracer material. Precautions shall be taken to avoid ingestion or inhalation of radioactive material.

(2) Licensees shall not cause the injection of radioactive material into fresh water aquifers without prior written authorization from the Executive Secretary and other appropriate State Agencies.

R313-38-47. Radioactive Markers.

The licensee may use radioactive markers in wells only if the individual markers contain quantities of licensed material not exceeding the quantities specified in R313-19-71. The use of markers is subject only to the requirements of R313-38-37.

R313-38-48. Particle Accelerators.

Licensees or registrants shall not permit above-ground testing of particle accelerators, designed for use in well logging, which results in the production of radiation, except in areas or facilities controlled or shielded so that the requirements of R313-15-201 and R313-15-301, as applicable, are met.

R313-38-49. Uranium Sinker Bars.

Licensees may use a uranium sinker bar in well logging after July 14, 1988, only if it is legibly impressed with the words "CAUTION - RADIOACTIVE-DEPLETED URANIUM" and "NOTIFY CIVIL AUTHORITIES (or COMPANY NAME) IF FOUND."

R313-38-51. Use of a Sealed Source in a Well Without a Surface Casing.

Licensees may use a sealed source in a well without a surface casing for protecting fresh water aquifers only if the licensee follows a procedure for reducing the probability of the source becoming lodged in the well. The procedures must be approved by the Executive Secretary, the Nuclear Regulatory Commission or an Agreement State.

R313-38-61. Training Requirements.

(1) Licensees or registrants shall not permit individuals to act as a logging supervisor as defined in R313-38 until the individual has complied with the following:

(a) received, in a course recognized by the Executive Secretary, the Nuclear Regulatory Commission, an Agreement State, or a Licensing State, instruction in the subjects outlined in R313-38-61(5) and demonstrated an understanding thereof by successfully completing a written test;

(b) read and received instruction in the rules contained in R313-38 and the applicable sections of R313-12, R313-15 and R313-18 or their equivalent, conditions of appropriate license or certificate of registration, and the licensee's or registrant's operating and emergency procedures, and demonstrated an understanding thereof; and

(c) has completed on-the-job training and demonstrated competence in the use of licensed materials, remote handling tools, and radiation survey instruments by a field evaluation.

(2) Licensees or registrants shall not permit individuals to act as a logging assistant as defined in R313-38 until the individual has complied with the following:

(a) read or received instruction in the licensee's or registrant's operating and emergency procedures and documented an understanding thereof;

(b) has received instruction in applicable sections of R313-12, R313-15 and R313-18 or their equivalent;

(c) demonstrated competence to use, under the personal supervision of the logging supervisor, the sources of radiation, related handling tools, and radiation survey instruments which will be used on the job; and

(d) has demonstrated understanding of the materials listed in R313-38-61(2)(a) and (b) by successfully completing a written or oral test.

(3) Licensees or registrants shall provide safety reviews for logging supervisors and logging assistants at least annually.

(4) The licensee or registrant shall maintain a record on logging supervisors and logging assistants training and annual safety review. The training records must include copies of written tests and dates of oral tests given after January 1, 1989. The training records must be retained until three years following the termination of employment. Records of annual safety reviews must list the topics discussed and be retained for three years.

(5) The licensee or registrant shall include the following subjects in the training required in R313-38-61(1)(a).

(a) Fundamentals of radiation safety including:

(i) characteristics of radiation;

(ii) units of radiation dose and quantity of radioactivity;

(iii) hazards of exposure to radiation;

(iv) levels of radiation from licensed material;

(v) methods of controlling radiation dose (time, distance, and shielding); and

(vi) radiation safety practices, including prevention of contamination, and methods of decontamination.

(b) Radiation detection instruments including:

(i) use, operation, calibration, and limitations of radiation survey instruments;

(ii) survey techniques; and

(iii) use of personnel monitoring equipment.

(c) Equipment to be used including:

(i) operation of equipment, including source handling equipment and remote handling tools;

(ii) storage, control, and disposal of licensed material; and

(iii) maintenance of equipment.

(d) The requirements of pertinent federal and state rules.

(e) Case histories of accidents in well logging.

R313-38-63. Operating and Emergency Procedures.

Licensees or registrants shall develop and follow written operating and emergency procedures that cover the following:

(1) the handling and use of sources of radiation including the use of sealed sources in wells without surface casing for protecting fresh water aquifers, if appropriate;

(2) handling and use of sources of radiation to be employed so that no individual is likely to be exposed to radiation doses in excess of the standards established in R313-15;

(3) methods and occasions for conducting radiation surveys;

(4) methods and occasions for locking and securing sources of radiation;

(5) personnel monitoring and the use of personnel monitoring equipment;

(6) transportation to temporary job sites and field stations, including the packaging and placing of sources of radiation in vehicles, placarding of vehicles, and securing sources of radiation during transportation;

(7) minimizing exposure of individuals in the event of an accident;

(8) procedure for notifying proper personnel in the event of an accident;

(9) maintenance of records;

(10) inspection and maintenance of sealed sources, source holders, logging tools, source handling tools, storage containers, transport containers, injection tools, and uranium sinker bars;

(11) procedure to be followed in the event a sealed source is lodged downhole;

(12) procedures to be used for picking up, receiving, and opening packages containing radioactive material;

(13) for the use of tracers, procedures to be used for decontamination of the environment, equipment, and personnel; and

(14) actions to be taken if a sealed source is ruptured including actions to prevent the spread of contamination and minimize inhalation and ingestion of licensed materials and actions to obtain suitable radiation survey instruments as required by R313-38-33.

R313-38-65. Personnel Monitoring.

(1) The licensee or registrant shall not permit an individual to act as the logging supervisor or logging assistant unless that person wears, at all times during the handling of sources of radiation, either a film badge or a thermoluminescent dosimeter (TLD). Film badges or TLD's must be assigned to and worn by only one individual. Film badges must be replaced at least monthly and TLD's replaced at least quarterly. After replacement, the film badges or TLD's must be promptly processed.

(2) The licensee shall provide bioassay services to individuals using licensed materials in subsurface tracer studies if required by the license.

(3) The licensee or registrant shall retain records of film badge, TLD and bioassay results for inspection by a representative of the Board or the Executive Secretary.

R313-38-67. Radiation Surveys.

(1) The licensee shall make radiation surveys, including but not limited to, the surveys required under R313-38-67(2) through (6), of areas where licensed materials are used and stored.

(2) Before transporting licensed materials, the licensee shall make a radiation survey of the position occupied by individuals in the vehicle and of the exterior of a vehicle used to transport the licensed materials.

(3) If the sealed source assembly is removed from the logging tool before departure from the temporary job site, the licensee shall confirm that the logging tool is free of contamination by energizing the logging tool detector or by using a survey meter.

(4) If the licensee has reason to believe that, as a result of operations involving a sealed source, the encapsulation of the sealed source could be damaged by the operation, the licensee shall conduct a radiation survey, including a contamination survey, during and after the operation.

(5) The licensee shall make a radiation survey at the temporary job site before and after subsurface tracer studies to confirm the absence of contamination.

(6) The results of surveys required by R313-38-67(1) through (5) shall be recorded and must include the date of the survey, the name of the individual making the survey, the identification of the survey instrument used, and the location of the survey. The licensee shall retain records of surveys for three years after they are made, for inspection by a representative of the Board or the Executive Secretary.

R313-38-69. Radioactive Contamination Control.

(1) If the licensee detects evidence that a sealed source has ruptured or licensed materials have caused contamination, the licensee shall initiate immediately the emergency procedures required by R313-38-63.

(2) If contamination results from the use of licensed material in well logging, the licensee shall decontaminate all work areas, equipment, and unrestricted areas.

(3) During efforts to recover a sealed source lodged in the well, the licensee shall continuously monitor, with an appropriate radiation detection instrument or a logging tool with a radiation detector, the circulating fluids from the well, if they are present, to check for contamination resulting from damage to the sealed source.

R313-38-71. Security.

(1) A logging supervisor shall be physically present at a temporary job site whenever licensed material is being handled or is not stored and locked in a vehicle or storage place. The logging supervisor may leave the job site in order to obtain assistance if a source becomes lodged in a well.

(2) During well logging, except when radiation sources are below ground or in shipping or storage containers, the logging supervisor or individual designated by the logging supervisor shall maintain direct surveillance of the operation to prevent unauthorized entry into a restricted area, as defined in R313-12-3.

R313-38-73. Documents and Records Required at Field Stations.

Licensees or registrants shall maintain, for inspection by a representative of the Board or the Executive Secretary, the following documents and records for the specific devices and sources used at the field station:

(1) appropriate license, certificate or registration, or equivalent document;

(2) operating and emergency procedures;

(3) a copy of R313-12, R313-15, R313-16, R313-18, R313-19 and R313-38 of the Utah Radiation Control rules, as applicable;

(4) records of the latest survey instrument calibrations pursuant to R313-38-33;

(5) records of the latest leak test results pursuant to R313-38-35;

(6) physical inventory records required pursuant to R313-38-37;

(7) utilization records required pursuant to R313-38-39;

(8) records of inspection and maintenance required pursuant to R313-38-43;

(9) training records required by R313-38-61; and

(10) survey records required pursuant to R313-38-67.

R313-38-75. Documents and Records Required at Temporary Job Sites.

Licensees or registrants conducting operations at a temporary job site shall have the following documents and records available at that site for inspection by a representative of the Board or the Executive Secretary:

(1) operating and emergency procedures;

(2) survey records required pursuant to R313-38-67 for the period of operation at the site;

(3) evidence of current calibration for the radiation survey instruments in use at the site; and

(4) when operating in the State under reciprocity, a copy of the appropriate license, certificate of registration, or equivalent document.

R313-38-77. Notification of Incidents, Abandonment, and Lost Sources.

(1) Notification of incidents and sources lost in other than downhole logging operations shall be made in accordance with appropriate provisions of R313-15.

(2) Whenever a sealed source or device containing radioactive material is lodged downhole, the licensee shall:

(a) monitor at the surface for the presence of radioactive contamination with a radiation survey instrument or logging tool during logging tool recovery operations; and

(b) notify the Executive Secretary immediately by telephone if radioactive contamination is detected at the surface or if the source appears to be damaged.

(3) When it becomes apparent that efforts to recover the radioactive source will not be successful, the licensee shall:

(a) advise the well owner or operator, as appropriate, of the Utah Radiation Control Rules regarding abandonment and an appropriate method of abandonment, which shall include:

(i) the immobilization and sealing in place of the radioactive source with a cement plug;

(ii) the setting of a whipstock or other deflection device; and

(iii) the mounting of a permanent identification plaque, at the surface of the well, containing the appropriate information required by R313-38-15(1)(e);

(b) notify the Executive Secretary by telephone, giving the circumstances of the loss, and request approval of the proposed abandonment procedures; and

(c) file a written report with the Executive Secretary within 30 days of the abandonment, setting forth the following information:

(i) date of occurrence and a brief description of attempts to recover the source;

(ii) a description of the radioactive source involved, including radionuclide, quantity, and chemical and physical form;

(iii) surface location and identification of well;

(iv) results of efforts to immobilize and set the source in place;

(v) depth of the radioactive source;

(vi) depth of the top of the cement plug;

(vii) depth of the well; and

(viii) information contained on the permanent identification plaque.

(4) The licensee shall immediately notify the Executive Secretary by telephone and subsequently by confirming letter if the licensee knows or has reason to believe that radioactive material has been lost in or to an underground potable water source. Notices shall designate the well location and shall describe the magnitude and extent of loss of radioactive material, assess the consequences of the loss, and explain efforts planning or being taken to mitigate these consequences.

R313-38-91. Exemptions.

The Executive Secretary may, upon application of interested persons or upon his initiative, grant exemptions from the requirements of the rules in R313-38 as he 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.

R313-38-98. Example of Plaque for Identifying Wells Containing Sealed Sources Containing Radioactive Material Abandoned Downhole.

TABLE

"(COMPANY NAME)
(WELL IDENTIFICATION)
CAUTION
ONE - TWO CURIE CS-137 RADIOACTIVE SOURCE ABANDONED
3-3-75 AT 8400 FEET PLUG BACK DEPTH 8200 FEET
DO NOT RE-ENTER THIS WELL BEFORE CONTACTING
THE EXECUTIVE SECRETARY OF THE
UTAH RADIATION CONTROL BOARD"

The size of the plaque should be convenient for use on active or inactive wells, for example, a seven inch square letter size of the word "CAUTION" should be approximately twice the letter size of the rest of the information, or one-half inch and one-quarter inch letter size respectively.

KEY: licensing, radioactive material, administrative responsibility, surveys

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Notice of Continuation January 25, 1999 19-3-113

R315. Environmental Quality, Solid and Hazardous Waste.
R315-304. Industrial Solid Waste Landfill Requirements.
R315-304-1. Applicability.

(1) Except for a Class IIIb Landfill that receives waste exclusively from on-site, the requirements of Rule R315-304 apply to each Class III Landfill as specified.

(2) For a Class IIIb Landfill that receives waste exclusively from on site:

(a) the requirements of Rule R315-304 become effective July 15, 1999.

(b) The owner or operator of a landfill may;

(i) apply to the Executive Secretary for an extension of time beyond July 15, 1999 to meet the requirements of Rule R315-304; and

(ii) be placed on a compliance schedule by the Executive Secretary.

(3) The requirements of Rule R315-304 do not apply to the following materials managed at an industrial facility:

(a) fly ash waste, bottom ash waste, slag waste, or flue gas emission control dust generated primarily from the combustion of coal or other fossil fuels;

(b) wastes from the extraction, beneficiation, and processing of ores and minerals;

(c) electric arc furnace slag, open hearth furnace slag, and other slags generated during carbon steel production; and

(d) cement kiln dust.

R315-304-2. Industrial Landfill Standards for Performance.

Each Class III Landfill shall meet the landfill standards for performance as specified in Section R315-303-2.

R315-304-3. Definitions.

Terms used in Rule R315-304 are defined in Section R315-301-2. In addition, for the purpose of Rule R315-304, the following definitions apply.

(1) "Class IIIa Landfill" means an industrial solid waste landfill that is not open to the general public and may accept:

(a) any nonhazardous industrial waste;

(b) waste that is exempt from hazardous waste regulations under Section R315-2-4; or

(c) conditionally exempt small quantity generator hazardous waste as defined by Section R315-2-5.

(2) "Class IIIb Landfill" means an industrial solid waste landfill that is not open to the general public and may accept any nonhazardous industrial solid waste except:

(a) waste that is exempt from hazardous waste regulations under Section R315-2-4, excluding Subsections R315-2-4(b)(3), (4), (5), (7), and (14), unless approved by the Executive Secretary; or

(b) conditionally exempt small quantity generator hazardous waste as defined by Section R315-2-5.

(3) "Existing Class III Landfill" means:

(a) for a Class IIIa Landfill and a Class IIIb Landfill that does not receive waste exclusively from on-site, an industrial solid waste landfill that began receiving waste on or before January 1, 1998; and

(b) for a Class IIIb Landfill that receives waste exclusively from on-site, an industrial solid waste landfill that began receiving waste on or before July 15, 1999.

(4) "New Class III Landfill" means:

(a) for a Class IIIa Landfill and a Class IIIb Landfill that does not receive waste exclusively from on-site, an industrial solid waste landfill that began receiving waste after January 1, 1998; and

(b) for a Class IIIb Landfill that receives waste exclusively from on-site, an industrial solid waste landfill that began receiving waste after July 15, 1999.

R315-304-4. Industrial Landfill Location Standards.

(1) Class IIIa Landfills.

(a) A new Class IIIa Landfill shall meet the location standards of Subsection R315-302-1(2).

(b) A new Class IIIa Landfill that is proposed on the site of generation of the industrial solid waste or a lateral expansion of an existing Class IIIa Landfill, shall meet the location standards of Subsections R315-302-1(2)(b), (c), (d), and (e) with respect to geology, surface water, wetlands, and ground water.

(c) An existing Class IIIa Landfill shall not be subject to the location standards of Subsection R315-302-1(2).

(d) An exemption from any location standard of Subsection R315-302-1(2), except the standards for floodplains and wetlands, may be granted by the Executive Secretary on a site specific basis if it is determined that the exemption will cause no adverse impacts to human health or the environment.

(i) No exemption may be granted without application to the Executive Secretary.

(ii) If an exemption is granted, the landfill may be required to have more stringent design, construction, monitoring program, or operational practice to protect human health or the environment.

(2) Class IIIb Landfills.

(a) A new Class IIIb landfill or a lateral expansion of an existing Class IIIb Landfill shall be subject to the following location standards:

(i) the standards with respect to floodplains as specified in Subsection R315-302-1(2)(c)(ii);

(ii) the standards with respect to wetlands as specified in Subsection R315-302-1(2)(d); and

(iii) the landfill shall be located so that the lowest level of waste is at least five feet above the historical high level of ground water.

(b) For a lateral expansion of an existing Class IIIb Landfill, an exemption from any location standard of Subsection R315-304-4(2)(a) may be granted by the Executive Secretary on a site specific basis if it is determined that the exemption will cause no adverse impacts to human health or the environment.

(i) No exemption may be granted without application to the Executive Secretary.

(ii) If an exemption is granted, the landfill may be required to have more stringent design, construction, monitoring program, or operational practice to protect human health or the environment.

(c) An existing Class IIIb Landfill shall not be subject to the location standards of Subsection R315-304-4(2)(a).

R315-304-5. Industrial Landfill Requirements.

(1) Each Class III Landfill shall meet the applicable

general requirements of Subsections R315-302-2(2)(a), (b), (c), (d), (g), (i), (j), (k), (l), (m), (n), and (o); and (3)(a), (b)(i), (iii), (iv), and (vi) as determined by the Executive Secretary.

(2) Each Class III Landfill shall meet the applicable general requirements for closure and post-closure care of Subsections R315-302-3(2); (3); (4)(a), and (b); (5); (6)(a)(iv) through (vi), (6)(b), and (c); and (7)(a) as determined by the Executive Secretary.

(a) Each Class IIIa Landfill shall meet the closure requirements of Subsection R315-303-3(4).

(b) Each Class IIIb Landfill shall meet the closure requirements of Subsection R315-305-5(5)(b).

(c) If a Class III Landfill is already subject to the closure and post-closure requirements of another Federal or state agency which are as stringent as specified in Subsections R315-304-5(2)(a) or (b), the landfill may be exempt, upon approval of the Executive Secretary, from the closure requirements of Subsections R315-304-5(2)(a) or (b).

(3) Standards for Design.

(a) The owner or operator of a Class III Landfill shall design the landfill to minimize the acceptance of liquids and control storm water run-on/run-off as specified in Subsections R315-303-3(1)(b), (c), and (d).

(b) The owner or operator of a Class III Landfill shall design the landfill to meet the requirements of Subsections R315-303-3(6)(a), (c), (e), (f), (g), (h), and (i) as determined by the Executive Secretary.

(4) Ground Water Monitoring.

(a) The owner or operator of a Class IIIa Landfill shall monitor the ground water beneath the landfill as specified in Rule R315-308.

(b) Subject to the performance standard of Subsection R315-303-2(1), if the owner or operator of a Class IIIa Landfill is monitoring the ground water beneath the landfill and otherwise meeting the requirements of a discharge permit as issued by the Utah Division of Water Quality, the landfill may be exempt, upon approval of the Executive Secretary, from the ground water monitoring requirements of Rule R315-308.

(c) A Class IIIb Landfill is exempt from the ground water monitoring requirements of Rule R315-308.

(5) Standards for Operation.

(a) Each Class IIIa Landfill shall meet the standards of Section R315-303-4 except:

(i) for the requirements of Subsections R315-303-4(2)(f) and R315-303-4(6); and

(ii) may be exempt from the daily cover requirements of Subsection R315-303-4(4) upon the demonstration that an alternate schedule for the covering of waste at the landfill will not present a threat to human health or the environment.

(b) Each Class IIIb Landfill shall meet the requirements for operation in Subsections R315-305-4(7) and R315-305-5(2) through (4) as determined by the Executive Secretary.

(6) Financial Assurance.

(a) The owner or operator of each Class III Landfill shall establish financial assurance as required by Rule R315-309.

(b) If the owner or operator of a Class III Landfill has financial assurance, in effect and active, that covers the costs of closure and post-closure care of the landfill as required by another Federal or state agency which is as stringent as the requirements of Rule R315-309, the landfill may be exempt, upon approval of the Executive Secretary, from the financial assurance requirements of Rule R315-309.

(7) Permit Requirements.

(a) Each Class III Landfill shall apply for and obtain a permit to operate by meeting the requirements of Rule R315-310.

(b) The contents of a permit application for a Class IIIa Landfill shall be the information required in Section R315-310-4.

(c) The contents of a permit application for a Class IIIb Landfill shall be the information required in Section R315-310-5.

KEY: solid waste management, waste disposal

January 5, 1999	**19-6-105**
Notice of Continuation May 2, 1997	**19-6-108**
	40 CFR 257

R382. Health, Children's Health Insurance Program.
R382-10. Eligibility.
R382-10-1. Authority.

This rule sets forth the eligibility requirements for coverage under the Children's Health Insurance Program (CHIP). It is authorized by Title 26, Chapter 40.

R382-10-2. Definitions.

(1) The Department adopts the definitions found in Sections 2110(b) and (c) of the Social Security Act as enacted by Pub. L. No. 105-33 which are incorporated by reference in this rule.

(2) The following additional definitions also apply:

(a) "Applicant," means a child on whose behalf an application has been made for benefits under the Children's Health Insurance Program, but who is not an enrollee.

(b) "Best estimate" means the Department's determination of a household's income for the upcoming certification period, based on past and current circumstances and anticipated future changes.

(c) "Children's Health Insurance Program" or "CHIP" means the program for benefits under the Utah Children's Health Insurance Act, Title 26, Chapter 40.

(d) "Department" means the Utah State Department of Health.

(e) "Income averaging" means a process of using a history of past or current income and averaging it over a determined period of time that is representative of future income.

(f) "Income anticipating" means a process of using current facts regarding rate of pay, number of working hours, and expected changes to anticipate future income.

(g) "Income annualizing" means a process of determining the average annual income of a household, based on the past history of income and expected changes.

(h) "Local office" means any Bureau of Eligibility Services office location, outreach location, or telephone location where an individual may apply for medical assistance.

(i) "Recertification month" means the last month of the eligibility period for an enrollee.

(j) "Verifications" means the proofs needed to decide if a child meets the eligibility criteria to be enrolled in the program. Verifications may include hard copy documents such as a birth certificate, computer match records such as Social Security benefits match records, and collateral contacts with third parties who have information needed to determine the eligibility of a child.

R382-10-3. Actions on Behalf of a Minor.

(1) A parent or an adult who has assumed responsibility for the care or supervision of a child may apply for CHIP enrollment, provide information required by this rule, or otherwise act on behalf of a child in all respects under the statutes and rules governing the CHIP program.

(a) The child, if 18 years old or an emancipated minor, the child's parent or legal guardian must indicate in writing to the Department who is authorized as the child's representative.

(b) The executive director of the Department or his designee may designate an authorized representative if the child needs a representative but is unable to make a choice either in writing or orally in the presence of a witness.

(2) Where the statutes or rules governing the CHIP program require a child to take an action, the parent or adult who has assumed responsibility for the care or supervision of the child is responsible to take the action on behalf of the child. If the parent or adult who has assumed responsibility for the care or supervision of the child fails to take an action, the failure is attributable as the child's failure to take the action.

(3) Notice to the parent or adult who has assumed responsibility for the care or supervision of the child is notice to the child.

R382-10-4. Applicant and Enrollee Rights and Responsibilities.

(1) A parent or an adult who has assumed responsibility for the care or supervision of a child may apply or reapply at any time for Children's Health Insurance Program benefits on behalf of a child. An emancipated child or an 18 year old child may apply on his own behalf.

(2) The applicant must provide the Department with verifications to establish the eligibility of the child, including information about the parents.

(3) Anyone may look at the eligibility policy manuals located at any local office, except at outreach or telephone locations.

(4) The parent or other individual who arranged for medical services on behalf of the child shall repay the Department for services paid for by the Department under this program if the child is determined not to be eligible for CHIP.

(5) The parent(s) or child, or other responsible person acting on behalf of a child must report certain changes to the local office within ten days of the day the change becomes known. Some examples of reportable changes include:

(a) An enrollee begins to receive coverage under a group health plan or other health insurance coverage.

(b) An enrollee begins to have access to coverage under a group health plan or other health insurance coverage.

(c) An enrollee leaves the household or dies.

(d) An enrollee or the household moves out of state.

(e) Change of address of an enrollee or the household.

(f) An enrollee enters a public institution or an institution for mental diseases.

(6) Applicants and enrollees have the right to be notified about actions the agency takes regarding their eligibility or continued eligibility, the reason the action was taken, and the right to request an agency conference or agency action.

R382-10-5. Verification and Information Exchange.

(1) The applicant and enrollee upon recertification must provide verification of eligibility factors as requested by the Department.

(2) The Department may release information concerning applicants and enrollees and their households to other state and federal agencies to determine eligibility for other public assistance programs.

(3) The Department must release information to the Title IV-D agency and Social Security Administration to determine benefits.

(4) The Department may verify information by exchanging

information with other public agencies as described in 42 CFR 435.945, 435.948, 435.952, 435.955, and 435.960, 1997 edition.

R382-10-6. Citizenship and Alienage.

(1) To be eligible to enroll in the program, a child must be a citizen of the United States or a qualified alien as defined in Pub. L. No. 104-193(401) through (403), (411), (412), (421) through (423), (431), and (435), and amended by Pub. L. No. 105-33(5302)(b) and (c), (5303), (5305)(b), (5306), (5562), (5563), and (5571).

(2) Hmong or Highland Lao veterans who fought on behalf of the Armed Forces of the United States during the Vietnam conflict and who are lawfully admitted to the United States for permanent residence, and their family members who are also qualified aliens, may be eligible to enroll in the program regardless of their date of entry into the United States.

(3) One adult household member must declare the citizenship or alien status of all applicants in the household. The applicant must provide verification of his citizenship or alien status.

(4) A qualified alien, as defined in Pub. L. No. 104-193(431) and amended by Pub. L. No. 105-33(5302)(c)(3), (5562), and (5571), admitted into the United States prior to August 22, 1996, may enroll in the program.

(5) A qualified alien, as defined in Pub. L. No. 104-193(431) and amended by Pub. L. No. 105-33(5302)(c)(3), (5562), and (5571), newly admitted into the United States on or after August 22, 1996, may enroll in the program after five years have passed from his date of entry into the United States.

R382-10-7. Utah Residence.

(1) A child must be a Utah resident to be eligible to enroll in the program.

(2) An American Indian child in a boarding school is a resident of the state where his parents reside. A child in a school for the deaf and blind is a resident of the state where his parents reside.

(3) A child is a resident of the state if he is temporarily absent from Utah due to employment, schooling, vacation, medical treatment, or military service.

(4) The child need not reside in a home with a permanent location or fixed address.

R382-10-8. Residents of Institutions.

(1) Residents of institutions described in Section 2110(b)(2)(A) of the Social Security Act as enacted by Pub. L. No. 105-33 are not eligible for the program.

(2) A child under the age of 18 is not a resident of an institution if he is living temporarily in the institution while arrangements are being made for other placement.

(3) A child who resides in a temporary shelter for a limited period of time is not a resident of an institution.

R382-10-9. Social Security Numbers.

(1) The Department may request applicants to provide the correct Social Security Number (SSN) or proof of application for a SSN for each household member at the time of application for the program.

(2) A child may not be denied CHIP enrollment for failure to provide a SSN.

R382-10-10. Creditable Health Coverage.

(1) To be eligible for enrollment in the program, a child must meet the requirements of Sections 2110(b)(1)(C) and (2)(B) of the Social Security Act as enacted by Pub. L. No. 105-33.

(2) A child who is covered under a group health plan or other health insurance coverage including coverage under a parent's or legal guardian's employer, as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), is not eligible for CHIP assistance.

(3) A child who has access to health insurance coverage through an employer where the cost to enroll the child in the plan is less than 5% of the household's gross annual income, is not eligible for CHIP assistance. The child is considered to have access to coverage even if the employer offers coverage only during an open enrollment period.

(4) The Department shall deny eligibility if the applicant, a custodial parent, or an absent parent with a legal obligation to provide health insurance coverage has voluntarily terminated health insurance coverage in the three months prior to the application date for enrollment under CHIP. An applicant or applicant's parent(s) who is involuntarily terminated from an employer's plan is eligible for CHIP without a three month waiting period.

(5) If an absent parent is court-ordered to provide health insurance for a child and could enroll the child in the parent's employer's health insurance plan, the child is not eligible for CHIP enrollment.

(6) A child with creditable health coverage operated or financed by the Indian Health Services is not excluded from enrolling in the program.

(7) An applicant must report at application and certification review whether any of the children in the household for whom enrollment is being requested has access to or is covered by a group health plan, other health insurance coverage, or a state employee's health benefits plan.

(8) An enrollee must report when any enrollee in the household begins to receive coverage under, or begins to have access to, any type of group health plan, other health insurance coverage, or a state employee's health benefits plan.

(9) The Department shall deny an application or recertification if the enrollee fails to respond to questions about health insurance coverage for children the household seeks to enroll or recertify in the program.

R382-10-11. Household Composition.

(1) The following individuals who reside together must be included in the household for purposes of determining the household size and whose income will be counted, whether or not the individual is eligible to enroll in the program:

(a) A child who meets the CHIP age requirement and who does not have access to and is not covered by a group health plan or other health insurance;

(b) Siblings, half-siblings, adopted siblings, and step-siblings of the child who meets the CHIP age requirement if these individuals also meet the CHIP age requirement;

(c) Parents and stepparents of any child who is included in the household size;

(d) Children of any child included in the household size.

(2) Any individual described in Subsection (1) of this Section who is temporarily absent solely by reason of employment, school, training, military service, or medical treatment, or who will return home to live within 30 days from the date of application, is part of the household.

(3) A household member described in Subsection (1) of this Section who does not qualify to enroll in the CHIP program due to his alien status is included in the household size and his income is counted as household income.

(4) If an individual is caring for a child of his or her former spouse, in a case in which a divorce has been finalized, the child may be included in the household if the child resides in the home.

R382-10-12. Age Requirement.

(1) A child must be under 19 years of age to enroll in the program.

(2) The month in which a child's 19th birthday occurs is the last month of eligibility for CHIP enrollment.

R382-10-13. Income Provisions.

To be eligible to enroll in the Children's Health Insurance Program, gross household income must be equal to or less than 200% of the federal non-farm poverty guideline for a household of equal size. All gross income, earned and unearned, received by any household member is counted toward household income, unless this section specifically describes a different treatment of the income.

(1) The Department does not count income that is defined in 20 CFR 416(K) Appendix, 1997 edition, which is adopted and incorporated by reference.

(2) Any income in a trust that is available to, or is received by a household member, is countable income.

(3) Payments received from the Family Employment Program, General Assistance, or refugee cash assistance or adoption support services as authorized under Title 35A, Chapter 3 is countable income.

(4) Rental income is countable income. The following expenses can be deducted:

(a) taxes and attorney fees needed to make the income available;

(b) upkeep and repair costs necessary to maintain the current value of the property;

(c) utility costs only if they are paid by the owner; and

(d) interest only on a loan or mortgage secured by the rental property.

(5) Deposits to joint checking or savings accounts are countable income, even if the deposits are made by a non-household member. An applicant or enrollee who disputes household ownership of deposits to joint checking or savings accounts shall be given an opportunity to prove that the deposits do not represent income to the household. Funds that are successfully disputed are not countable income.

(6) Cash contributions made by non-household members are counted as income unless the parties have a signed written agreement for repayment of the funds.

(7) The interest earned from payments made under a sales contract or a loan agreement is countable income to the extent that these payments will continue to be received during the certification period.

(8) In-kind income, which is goods or services provided to the individual from a non-household member and which is not in the form of cash, for which the individual performed a service or is provided as part of the individual's wages is counted as income. In-kind income for which the individual did not perform a service or did not work to receive is not counted as income.

(9) SSI and State Supplemental Payments are countable income.

(10) Death benefits are not countable income to the extent that the funds are spent on the deceased person's burial or last illness.

(11) A bona fide loan that an individual must repay and that the individual has contracted in good faith without fraud or deceit, and genuinely endorsed in writing for repayment is not countable income.

(12) Child Care Assistance under Title XX is not countable income.

(13) Reimbursements of Medicare premiums received by an individual from Social Security Administration or the State Department of Health are not countable income.

(14) Needs-based Veteran's pensions are not counted as income. If the income is not needs-based, only the portion of a Veteran's Administration check to which the individual is legally entitled is countable income.

(15) The first $1,620 of earned income a child earns in a year are excluded from household income if the child meets all of the following criteria:

(a) the child is a student who is regularly attending school that includes secondary school, post-secondary school, vocational and trade schools;

(b) the child is under age 19; and

(c) the child is not head of a household.

(16) Educational income such as educational loans, grants, scholarships, and work-study programs are not countable income. The individual must verify enrollment in an educational program.

(17) Reimbursements for expenses incurred by an individual are not countable income.

(18) Any payments made to an individual because of his status as a victim of Nazi persecution as defined in Pub. L. No. 103-286 are not countable income, including payments made by the Federal Republic of Germany, Austrian Social Insurance payments, and Netherlands WUV payments.

(19) Victim's Compensation payments as defined in Pub. L. No. 101-508 are not countable income.

(20) Disaster relief funds received if a catastrophe has been declared a major disaster by the President of the United States as defined in Pub. L. No. 103-286 are not countable income.

R382-10-14. Budgeting.

The following section describes methods that the Department will use to determine the household's countable monthly or annual income.

(1) The gross income of all household members is counted in determining the eligibility of a child, unless the income is excluded under this rule. Only expenses that are required to make an income available to the individual are deducted from the gross income. No other deductions are allowed.

(2) The Department shall determine monthly income by taking into account the months of pay where an individual receives a fifth paycheck when paid weekly, or a third paycheck when paid every other week. The Department shall multiply the weekly amount by 4.3 to obtain a monthly amount. The Department shall multiply income paid bi-weekly by 2.15 to obtain a monthly amount.

(3) The Department shall determine a child's eligibility and cost-sharing requirements prospectively for the upcoming certification period at the time of application and at each recertification for continuing eligibility. The Department shall determine prospective eligibility by using the best estimate of the household's average monthly income that is expected to be received or made available to the household during the upcoming certification period. The Department shall prorate income that is received less often than monthly over the certification period to determine an average monthly income. The Department may request prior years' tax returns as well as current income information to determine a household's income.

(4) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing. The Department may use a combination of methods to obtain the most accurate best estimate. The best estimate may be a monthly amount that is expected to be received each month of the certification period, or an annual amount that is prorated over the certification period. Different methods may be used for different types of income received in the same household.

(5) Farm and self-employment income is determined by using the individual's recent tax return forms. If tax returns are not available, the Department shall request income and expense information from a recent time period during which the individual had farm or self-employment income. The Department shall deduct expenses from gross income to determine the countable income of the individual. For self-employment and farm income, the Department shall deduct the same expenses from gross income that the Internal Revenue Service allows as self-employment expenses.

(6) The Department may annualize income for any household and in particular for households that have self-employment income, receive income sporadically under contract or commission agreements, or receive income at irregular intervals throughout the year.

(7) The Department may request additional information and verification about how a household is meeting expenses if the average household income appears to be insufficient to meet the household's living expenses.

R382-10-15. Assets.

An asset test is not required for CHIP eligibility.

R382-10-16. Application and Recertification.

The application is the initial request from an applicant for CHIP enrollment for a child. The application process includes gathering information and verifications to determine the child's eligibility for enrollment in the program. Recertification is the process of gathering information and verifications on a periodic basis to determine continued eligibility of an enrollee.

(1) The applicant must complete and sign a written application to become enrolled in the program.

(2) The Department accepts any Department-approved application form for medical assistance programs offered by the state as an application for CHIP enrollment.

(3) Individuals may apply at any local office. Individuals may request that an application form be mailed to them.

(4) The Department may interview applicants, the applicant's parents, and any adult who has assumed responsibility for the care or supervision of the child to assist in determining eligibility.

(5) If eligibility for CHIP enrollment ends, the Department shall review the case for eligibility under any other medical assistance program without requiring a new application. The Department may request additional verification from the household if there is insufficient information to make a determination.

R382-10-17. Eligibility Decisions.

(1) The Department must determine eligibility for CHIP within 30 days of the date of application. If a decision can not be made in 30 days because the applicant fails to take a required action and requests additional time to complete the application process, or if circumstances beyond the Department's control delay the eligibility decision, the Department shall document the reason for the delay in the case record. The Department must inform the applicant of the status of the application and the time frame for completing the application process.

(2) The Department may not use the time standard as a waiting period before determining eligibility, or as a reason for denying eligibility because the Department has not determined eligibility within that time.

(3) The Department shall complete a determination of eligibility or ineligibility for each application unless:

(a) the applicant voluntarily withdrew the application and the Department sent a notice to the applicant to confirm the withdrawal;

(b) the applicant died; or

(c) the applicant can not be located or has not responded to requests for information within the 30 day application period.

(4) The Department must redetermine eligibility at least every 12 months.

(5) At application and recertification, the Department must determine if any child applying for CHIP enrollment is eligible for coverage under Medicaid. A child who is eligible for Medicaid coverage is not eligible for CHIP. A child who must meet a spend-down to receive Medicaid is not eligible for Medicaid until the spend-down has been met.

R382-10-18. Effective Date of Enrollment and Recertification.

(1) The effective date of CHIP enrollment is the date a completed and signed application is received by the Department. Up to June 30, 1999, the Department will allow a grace enrollment period beginning no earlier than seven days before the date a completed and signed application is received by the

Department. The applicant must inform the Department that medical services were received during those seven days before the application is approved. The Department shall not pay for any services received before the effective enrollment date.

(2) A household that the Department has determined to be eligible for CHIP, and has a child enrolled in CHIP, may enroll another eligible child. The effective date of enrollment will be the date of report, except as otherwise provided in R382-10-18(1). The effective date for enrollment in CHIP for a child meeting one of the criteria below will be the date of the event listed below, if the household reports the event to the Department within 30 days of the event. The events are:

(a) when a new baby is born to a household member;

(b) when a child is adopted or placed for the purpose of adoption by a household member;

(c) when a parent of an enrolled child, or an enrolled child, marries, and a dependent child meeting CHIP eligibility criteria is added to the household as a result;

(d) when a child who was previously ineligible for CHIP because he had health insurance coverage, or had access to an employer's health insurance plan, loses coverage or access involuntarily.

(3) When the report is made more than 30 days after the specified event, enrollment in CHIP will be effective beginning the date of report, except as otherwise provided in R382-10-18(1).

(4) The effective date of enrollment for a recertification is the first day of the month after the recertification month, if the recertification is completed by the end of the recertification month and the child continues to be eligible.

(5) If both the recertification form and the required verifications are not received by the end of the recertification month, the case will be closed unless the enrollee has good cause for not completing the recertification process on time. Good cause includes a medical emergency, death of an immediate family member, or natural disaster, or other similar occurrence.

(6) The Department may require an interview with the parent, child, or adult who has assumed responsibility for the care or supervision of a child, or other authorized representative as part of the recertification process.

R382-10-19. Enrollment Period.

(1) The enrollment period begins with either the date of application, or an earlier date as defined in R382-10-18, if the applicant is determined eligible for CHIP enrollment. Covered services the child received on or after the effective date of enrollment are payable by CHIP for a child who was eligible upon application.

(2) A child eligible for CHIP enrollment receives 12 months of coverage unless the child turns 19 years of age before the end of the 12-month enrollment period, moves out of the state, becomes eligible for Medicaid, begins to be covered by or have access to coverage under a group health plan or other health insurance coverage, or enters a public institution. The month a child turns 19 years of age is the last month the child is eligible for CHIP.

R382-10-20. Termination and Notice.

(1) The Department shall notify an applicant or enrollee in writing of the eligibility decision made on the application or at recertification.

(2) The Department shall notify an enrollee in writing ten days before taking a proposed action adversely affecting the enrollee's eligibility.

(3) Notices under this section shall provide the following information:

(a) The action to be taken;

(b) The reason for the action;

(c) The regulations or policy that support the action;

(d) The applicant's or enrollee's right to a hearing;

(e) How an applicant or enrollee may request a hearing; and

(f) The applicant's or enrollee's right to represent himself, or use legal counsel, a friend, relative, or other spokesperson.

(4) The Department need not give ten-day notice of termination if:

(a) the child is deceased;

(b) the child has moved out of state and is not expected to return; or

(c) the child has entered a public institution, in which case eligibility may cease immediately and without prior notice.

R382-10-21. Case Closure or Withdrawal.

The department shall terminate a child's enrollment upon enrollee request or upon discovery that the child is no longer eligible. An applicant may withdraw an application for CHIP benefits any time prior to approval of the application.

KEY: children's health benefits*
January 7, 1999 **26-1-5**
26-40

R410. Health, Health Care Financing.
R410-14. Administrative Hearing Procedures.
R410-14-1. Introduction and Authority.

(1) Division policy is to resolve disputes at the lowest level. This rule is not meant to foreclose the Division's preference for informal resolutions through open discussion and negotiation between the Division and aggrieved persons.

(2) This rule is authorized by Section 1902(a)(3) SSA, 42 CFR 431, Subpart E, and Sections 26-1-24, 26-18-2.3, and 63-46b-1.

R410-14-2. Definitions.

(1) The definitions in R414-1 and Section 63-46b-2 apply to this rule.

(2) In addition, as used in this rule:

(a) "Action" means a denial, termination, suspension, or reduction of Medicaid or UMAP covered services regarding an applicant or a recipient; or a reduction or denial of reimbursement for services.

(b) "Aggrieved Person" means any applicant, recipient, or provider adversely affected by any action or inaction of DHCF.

(c) "Applicability" means a determination of whether a statute, rule, or order should be applied, and if so, how the law as stated should be applied to specific facts and circumstances.

(d) "Date of Action" means the date on which a denial of eligibility, or termination, suspension, or reduction of Medicaid or UMAP covered services becomes effective, regarding an applicant or recipient; or regarding a provider, the date on which:

(i) a reduction or denial of reimbursement or a sanction becomes effective;

(ii) notice is given of licensing deficiencies; or

(iii) notice is given that DHCF will not accept a Plan of Correction of survey deficiencies required by licensing.

(e) "Order" means an agency action of particular applicability, issued by the presiding officer, that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons, not a class of persons.

R410-14-3. Administrative Hearing Procedures.

(1) All Title XIX (Medicaid) or Utah Medical Assistance Program (UMAP) applicants, recipients, or providers aggrieved by any action or inaction of the Department of Health (DOH), Division of Health Care Financing (DHCF), may file a written request for agency action pursuant to 63-46b-3 and in accordance with this rule. All proceedings before DHCF, except as otherwise set forth, shall be conducted as a formal hearing. DHCF conducts hearings on many subjects including the following:

(a) PASARR Hearings. As provided by Section 4211 of the Omnibus Budget Reconciliation Act of 1987 (OBRA), which amended Title XIX of the Social Security Act by adding Section 1919 to the "Act," all residents and potential residents of a nursing facility (whether Medicaid eligible or otherwise) who disagree with the pre-admission screening and appropriateness of placement decision made by DHCF, shall be given an opportunity for a hearing upon written request. All PASARR hearings as set forth above shall be conducted as a formal hearing in accordance with R410-14-11.

(b) Nurse Aide Registry Hearings. As provided by Section 4211 of the Omnibus Budget Reconciliation Act of 1987 (OBRA), which amended Title XIX of the Social Security Act by adding Section 1919 to the "Act," all nurse aides employed by a certified nursing facility who have successfully completed and passed the nurse aide training and competency evaluation program, or both, shall be identified on a nurse aide registry. In addition, such nurse aides shall be subject to investigation upon allegations of resident abuse, neglect, or misappropriation of resident property. DHCF or its designated agents is responsible to investigate complaints. Before a substantiated claim can be entered into the registry, the nurse aide, upon written request, is entitled to a hearing to be conducted by DHCF or its designated agents. All nurse aide registry hearings as set forth above shall be conducted as formal hearings in accordance with R410-14-11.

(c) Skilled Nursing Facility (SNF), Intermediate Care Facility (ICF) or Intermediate Care Facility/Mentally Retarded (ICF/MR) Hearings. As provided by 42 CFR 431, Subpart D, DHCF must, for any SNF, ICF and ICF/MR, provide for appeals procedures that, as a minimum, satisfy the requirements of 42 CFR 431.153 through 431.155. Hearings shall be conducted as a formal hearing in accordance with R410-14-11.

(d) Informal Hearings. "Residents' Rights Hearings." As provided by Section 1919 of Title XIX of the Social Security Act, all residents of a nursing facility (whether Medicaid eligible or otherwise) have certain specific "residents' rights" and may be aggrieved by action or inaction of a nursing facility in the meeting of those rights. Responsibility for enforcing nursing home compliance with the residents' rights requirement rests with DHCF. All "resident rights" hearings shall be conducted as an informal hearing.

(2) A hearing is not required and will not be granted to an applicant, recipient, or provider if the sole issue is a federal or state law or policy requiring an automatic change in covered services adversely affecting some or all applicants, recipients, or providers (42 CFR 431.220).

(3) EXCEPT AS SPECIFIED HEREIN, R410-14 ONLY APPLIES TO TITLE XIX MEDICAID OR UMAP RECIPIENTS OR PROVIDERS. This rule does not apply to initial applications for medical assistance. A Medicaid or UMAP applicant who has been denied eligibility for medical assistance through the local Office of the Department of Workforce Services (DWS) must contact the Department of Workforce Services for a hearing.

(4) If eligibility for a non-medical assistance program in addition to Medicaid or UMAP is at issue, the Medicaid or UMAP eligibility determination hearing shall be conducted by the Department of Workforce Services (DWS) through the Office of Administrative Hearings. Requests for such hearings shall be sent to the address in R410-14-3(3). All hearings shall be conducted according to DWS hearing rules. DWS shall propose a recommended decision concerning the medical assistance issue only and shall submit it to the Executive Director of DOH or his designated representative for review and final agency order.

(5) DWS shall forward all requests for hearings to consider eligibility for medical assistance only to DHCF. A formal hearing in accordance with the hearing procedures herein

shall be conducted by DHCF.

R410-14-4. Availability of Hearing.

If there is no disputed issue of fact, the presiding officer may make a determination without an evidentiary hearing.

R410-14-5. Notice.

(1) DHCF shall give advance written notice to each individual who is affected by an adverse action taken by DHCF, in accordance with R410-14-8.

(2) A notice under this section must contain:

(a) a statement of the action DHCF intends to take;

(b) the date the intended action takes effect;

(c) the reasons for the intended action;

(d) the specific regulations that support, or the change in federal or state law or policy, that requires the action;

(e) the aggrieved person's right to request a formal hearing before DHCF, when applicable, and the method by which such hearing may be obtained from DHCF;

(f) a statement that the aggrieved person may represent himself or use legal counsel, relative, friend or other spokesman at the formal hearing; and,

(g) if applicable, an explanation of the circumstances under which Medicaid or UMAP coverage or reimbursement will be continued if a formal hearing is timely requested.

(3) DHCF shall mail advance notice at least ten calendar days before the date of the intended action EXCEPT as noted below:

(a) DHCF may mail a notice not later than the date of action if:

(i) DHCF has factual information confirming the death of a recipient or provider;

(ii) DHCF receives a clear, written statement signed by a recipient or provider that:

(A) he no longer wishes services or reimbursement, or

(B) he gives information that requires termination or reduction of services or reimbursement and understands that this must be the result of supplying that information;

(iii) the recipient has been admitted to an institution where he is ineligible under the State Plan for further services;

(iv) the recipient's or provider's whereabouts are unknown and the Post Office returns DHCF mail directed to him indicating no forwarding address;

(v) DHCF establishes the fact that the recipient has been accepted for Medicaid/UMAP services by another local jurisdiction, State, Territory or Commonwealth;

(vi) a change in the level of medical care is prescribed by the recipient's physician; or

(vii) a termination, suspension, or reduction of Medicaid or UMAP covered services or reimbursement is necessitated by an imminent peril to the public health, safety, or welfare.

(b) DHCF may shorten the period of advance mailed notice to five days before the date of action if:

(i) DHCF has facts indicating that action should be taken because of probable fraud by the applicant or recipient or provider; and

(ii) the facts have been verified, by affidavit, if possible.

R410-14-6. Request for Formal Hearing.

(1) DHCF shall conduct formal hearings on all "medical assistance only" issues.

(2) An aggrieved person may request a formal hearing within the following deadlines, depending upon the type of request:

(a) An aggrieved Medicaid provider may request a formal hearing within 30 calendar days from the date written notice is issued or mailed, whichever is later.

(b) An aggrieved Medicaid or UMAP applicant or recipient may request a formal hearing regarding eligibility for "medical assistance only" within 90 calendar days from the date written notice is issued or mailed, whichever is later.

(c) An aggrieved UMAP or Medicaid applicant or recipient may request a formal hearing regarding scope of service within 30 calendar days from the date written notice is issued or mailed, whichever is later, by DHCF of an action or intended action.

(3) Failure to submit a timely request for a formal hearing constitutes a waiver of a person's due process rights. A request for a hearing shall be in writing, shall be dated, and shall explain the reasons for which the hearing is requested. An aggrieved person may use the hearing request form which is attached to all negative eligibility action notices, which is entitled "Requests for Hearing/Agency Action."

(4) The address for submitting a "Request for Hearing/Agency Action" for: (a) Medicaid or UMAP providers; and (b) Medicaid or UMAP eligibility hearings or scope of service hearings is as follows:

Division of Health Care Financing
Office of Hearings and Appeals
Box 142901
Salt Lake City, Utah 84114-2901

(5) DHCF shall schedule a hearing or begin negotiations in the matter in writing within 30 days of the date of issuance of the request for formal hearing or agency action.

(6) DOH or DHCF may deny or dismiss a request for a formal hearing if:

(a) The aggrieved person withdraws the request in writing;

(b) The aggrieved person fails to appear at or participate in a scheduled hearing or prehearing without good cause;

(c) The aggrieved person prolongs the hearing process without good cause;

(d) The aggrieved person's whereabouts is unknown as indicated by return of agency mail without forwarding address;

(e) The provider fails to allow DHCF access to its records pursuant to R410-14-18(2)(b);

(f) A party does not respond, when requested, to any correspondence made in connection with the matter by the presiding officer, such as failure to provide relevant medical records.

R410-14-7. Reinstatement/Continuation of Services.

(1) DHCF may reinstate services for recipients or suspend any adverse action for providers if the aggrieved person requests a formal hearing not more than ten calendar days after the date of action.

(2) DHCF must reinstate or continue services for recipients or suspend adverse actions for providers until a decision is rendered after a formal hearing if:

(a) adverse action is taken without giving the ten day advance mailed notice to a recipient or provider in all circumstances where such advance notice is required;

(b) in those circumstances where advance notice is not required, the aggrieved person requests a formal hearing within ten calendar days following the date the adverse action notice is mailed; or

(c) DHCF determines that the action resulted from other than the application of federal or state law or policy.

R410-14-8. Notice of Formal Hearing.

DHCF shall notify the aggrieved person or his attorney, in writing, of the date, time, and place of the hearing. Notice shall be mailed not less than ten calendar days before the scheduled date of the formal hearing.

R410-14-9. Form of Papers.

(1) All papers to be filed in a formal proceeding shall:

(a) Be typewritten or legibly hand-written;

(b) Bear a caption clearly showing the title of the hearing;

(c) Bear the docket number, if any;

(d) Be dated and signed by the party or his authorized representative;

(e) Contain the address and telephone number of the party or his representative, if any; and

(f) Consist of an original and two copies filed with DHCF.

(2) Hearings may be delayed until the requirements of this section are met.

R410-14-10. Service.

(1) The party filing papers and documents shall serve them upon all parties to the formal proceeding. Proof of service shall be filed with DHCF.

(2) Service shall be personally delivered or by mail, properly addressed with postage prepaid, one copy to each entitled party. If a party is represented, service upon the representative is sufficient service upon the party.

(3) Proof of service shall be by certificate, affidavit, or acknowledgment.

(4) Wherever notice by DHCF is required, notification shall be effective upon the date of first class mailing to the party's residence or business address.

(5) In addition to the methods set forth in this rule, a party may be served as permitted by the Utah Rules of Civil Procedure.

R410-14-11. Intervention.

As permitted by Section 63-46b-9, a person may intervene if:

(1) The person petitions for leave to intervene at least seven days before the scheduled hearing, unless otherwise permitted by the presiding officer.

(2) The petition must contain a clear and concise statement of the direct and substantial interest of the person seeking leave to intervene in the hearing.

(3) Persons seeking affirmative relief shall state the basis of such relief.

(4) Other parties to the hearing have an opportunity to support or oppose intervention in a manner permitted by the presiding officer.

(5) The presiding officer may grant leave to intervene subject to such reasonable conditions as he may prescribe. An intervenor may be dismissed from the hearing if it appears that he has no direct or substantial interest in the hearing.

R410-14-12. Conduct of Hearing.

(1) Hearings shall be conducted according to 63-46b-8, and as described in R414-14.

(2) Formal hearings shall be conducted by an impartial presiding officer who is appointed by DOH. The presiding officer shall be empowered with such authority as granted by UCA Section 63-46b-1 through 22, except as may be limited by R410-14. No presiding officer shall have been directly involved in the initial determination of the action in question.

(3) The presiding officer may elect to hold a pre-hearing meeting for any of the following reasons:

(a) to formulate or simplify the issues;

(b) to obtain admissions of fact and documents, that will avoid unnecessary proof;

(c) to arrange for the exchange of proposed exhibits or prepared expert testimony;

(d) to outline procedures to be followed at the formal hearing; or

(e) to agree to other matters that may expedite the orderly conduct of the hearing, or a settlement.

(f) Agreements reached during the conference shall be recorded, or the parties may enter into a written stipulation, or agree to a statement made on the record by the presiding officer.

(4) All formal hearings may be conducted only after adequate written notice of the hearing has been served on all parties setting forth the time, date and place of the hearing.

(5) Testimony shall be taken under oath or affirmation administered by the presiding officer.

(6) Each party has the right to:

(a) call and examine parties and witnesses;

(b) introduce exhibits;

(c) question opposing witnesses and parties on any matter relevant to the issue even though the matter was not covered in the direct examination;

(d) impeach any witness regardless of which party first called him to testify; and

(e) rebut the evidence against him.

(7) The rules of evidence as applied in civil actions in the courts of this state shall be generally followed in the hearings. Any relevant evidence may be admitted. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but shall not be sufficient by itself to support a finding unless admissible over objection in civil actions. The presiding officer shall give effect to the rules of privilege recognized by law. Irrelevant, immaterial, and unduly repetitious evidence shall be excluded.

(8) The presiding officer may question any party or witness and may admit any evidence he believes is relevant or material.

(9) The presiding officer shall control the taking of evidence in a manner best suited to ascertain the facts and safeguard the rights of the parties. The presiding officer may determine the order in which evidence will be received.

(10) The presiding officer shall maintain order, and may recess the hearing for the time necessary to regain order, if a person engages in disrespectful, disorderly, or contumacious conduct. The presiding officer may take measures to remove a person, including participants, from the hearing, if necessary, to maintain order. If a participant shows persistent disregard on matters of order and procedure, the presiding officer may enter a sanction on the person, including: restricting the person's participation, striking pleadings or evidence, or issuing an order of default.

(11) If a party desires to employ a court reporter to make a record of the hearing, the original transcript of the hearing shall be filed with the presiding officer at no cost to the agency.

(12) The moving party has the burden of proving by a preponderance of the evidence whatever facts it must establish to sustain its position.

R410-14-13. Ex Parte Communications.

(1) Except as otherwise provided below, ex parte communications are prohibited.

(2) The presiding officer shall decline to listen to or accept any communication offered in violation of this rule and shall explain to the offeror that any communication received off the record and in violation of this rule must be made a part of the record and furnished to all parties.

(3) This rule shall not apply to communications concerning status of the hearing and uncontested procedural matters.

R410-14-14. Continuances or Further Hearings.

(1) The presiding officer may continue a formal hearing to another time or place, or order a further hearing on his own motion or upon the showing of good cause, at the request of any party.

(2) If the presiding officer determines that additional evidence is necessary for the proper determination of the case, he may, at his discretion, continue the hearing to a later date and order the party to produce additional evidence, or close the hearing and hold the record open in order to permit the introduction of additional documentary evidence. Any evidence submitted shall be made available to both parties and each party shall have the opportunity for rebuttal.

(3) Written notice of the time and place of a continued or further hearing shall be given in accordance with R410-14-7, except when a continuance is ordered during a hearing and adequate oral notice is given.

R410-14-15. Record.

A complete record of all formal hearings is made by the presiding officer. The recording shall be transcribed if requested by a party to the hearing. The requesting party shall pay the costs of transcription and copying. DHCF shall maintain the complete record of the hearing in a secure area. The record is the sole property of DHCF. DHCF or its designated agent shall retain recordings of formal hearings for a period of one year. Written records and documents shall be retained for a period not to exceed three years.

R410-14-16. Proposed Decision and Final Agency Review.

(1) At the conclusion of the formal hearing, the presiding officer shall take the matter under advisement and shall submit to the Executive Director of DOH or his designated representative a recommended decision, based on the evidence and testimony introduced in the proceeding.

(2) The proposed decision shall be in writing and shall contain findings of fact and conclusions of law.

(3) The Executive Director of DOH or his designated representative may:

(a) adopt the proposed decision, or any portion of the decision;

(b) reject the proposed decision, or any portion of the decision, and make his own independent determination based upon the record; or

(c) remand the matter to the presiding officer to take additional evidence, and the presiding officer thereafter shall submit to the Executive Director of DOH or his designated representative a new recommended decision; or

(d) send the proposed decision to the parties for comments prior to taking any of the above actions.

(4) The decision of the Executive Director or his designated representative constitutes final administrative action, and is subject to judicial review in accordance with the procedures set forth in R410-14-17.

(5) The aggrieved person or his representative shall be notified of the final administrative action and the aggrieved person's right to judicial review of the action.

R410-14-17. Agency Review.

An aggrieved person may move for reconsideration of DHCF's final administrative action, in accordance with Section 63-46b-12 and 13.

R410-14-18. Judicial Review.

Judicial review shall be obtained according to Section 63-46b-1 and 63-46b-14 through 18 and Section 78-2a-3.

R410-14-19. Discovery.

(1) The Utah Rules of Civil Procedure are inapplicable to these proceedings and no formal discovery except as set forth in this rule is permitted.

(2) Unless otherwise limited by order of the presiding officer, the scope of discovery in formal adjudicative proceedings is as follows:

(a) DHCF shall be permitted to review all records pertinent to the hearing that are in the custody or control of the applicant or recipient and the applicant or recipient's health care providers. DHCF shall give at least three days written notice to the custodian of such document(s).

(b) A provider shall allow DHCF to inspect its records that are pertinent to the hearing. Inspection shall be made at the provider's business office during regular working hours and after at least three days written notice.

(3) Upon written request at least three days prior to the hearing, the aggrieved person or his representative shall be permitted to examine all DHCF's documents and records for the formal hearing. The aggrieved party may request the Medicaid Management Information System (MMIS) claim file upon 15 calendar days request.

(4) The presiding officer may order the taking of interrogatories and depositions, set appropriate time-frames, assess sanctions for non-compliance, and assess the expense to the requesting party if the presiding officer determines such to be proper.

(5) The presiding officer may permit the filing of Requests for Admission, set appropriate time-frames for responses, and assess sanctions for non-compliance.

(6) The presiding officer may order at DHCF expense a medical assessment in order to obtain information necessary for a fair decision. This information is subject to confidentiality requirements and shall be made a part of the formal hearing record.

R410-14-20. Witnesses and Subpoenas.

(1) A party shall arrange for the presence of his witnesses at the hearing.

(2) A subpoena to compel the attendance of a witness or the production of evidence may be issued by the presiding officer, upon written request by a party and a sufficient showing of need.

(3) A subpoena may also be issued by the presiding officer on his own motion.

(4) An application for subpoena for the production by a witness of books, papers, correspondence, memoranda, or other records shall be made by affidavit to the presiding officer. The application must include:

(a) the name and address of the person or entity upon whom the subpoena is to be served;

(b) a description of the documents, papers, books, accounts, letters, photographs, objects, or tangible things not privileged, that the applicant seeks;

(c) a showing that the material requested is relevant to the issue involved in the hearing; and

(d) a statement by the applicant that to the best of his knowledge, the witness possesses or controls the requested material.

(5) The applicant shall arrange to serve all subpoenas that the presiding officer issues to him. A copy of the affidavit presented to the presiding officer shall be served with the subpoena.

(6) Except for employees of DOH, witnesses subpoenaed for any hearing are entitled to appropriate fees and mileage. The witness shall file a written demand for the fees with the presiding officer not later than ten days after the date the witness appeared at the hearing.

(7) The presiding officer may issue an order of default against any party who fails to obey an order entered by the presiding officer.

R410-14-21. Declaratory Orders.

(1) Declaratory orders shall be issued according to R380-1, and as described in R410-14-20.

(2) Copies of approved forms to petition for declaratory orders are available from DHCF upon request.

(3) If DHCF has not issued a declaratory order within 60 days after receipt of the request, the petition is denied.

(4) DHCF shall retain the request for declaratory ruling in its records.

(5) DHCF shall not issue a declaratory order if an adjudicative proceeding involving the same parties and issue is pending before the Agency or the courts.

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R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-29. Client Review/Education and Restriction Policy.
R414-29-1. Introduction and Authority.

(1) The Client Restriction Program promotes the appropriate use of quality medical services by identifying and correcting overutilization of services.

(2) This rule is required by 42 CFR 431.54(e) and 456.3, 1994 ed.

R414-29-2. Definitions.

In addition to the definitions in R414-1, the following definitions apply to this rule:

(1) "Overutilize" means use of medical services at a frequency or amount that is above what is medically necessary.

(2) "Restriction Case Manager" means a Medical Doctor or Doctor of Osteopathy who agrees to become the primary medical care provider for all of a restricted client's non-emergency medical needs.

(3) "Restriction Pharmacy" means the only pharmacy that can receive Medicaid reimbursement for dispensing non-emergency pharmacy items to a restricted client.

R414-29-3. Notifying Clients of Overutilization of Services.

(1) The Department may require a client to participate in the Restriction Program based on the client's overutilization of services. The Department shall notify the client in writing of its determination. This notice shall:

(a) state the factors, or combination of factors, justifying Restriction Program participation;

(b) cite the regulation authorizing Restriction Program participation;

(c) invite the client to provide additional information justifying the use of services, within ten calendar days after the date the notice is issued;

(d) notify the client that, if he fails to submit additional written justification within ten calendar days after the date the notice is issued, the Department shall require his participation in the Restriction Program.

(e) invite the client to select a Restriction Case Manager and a Restriction Pharmacy;

(f) inform the client that if he fails to contact the Department with a choice within ten calendar days after the date the notice is issued, the Department shall assign a Restriction Case Manager and a Restriction Pharmacy without further notice.

(2) If the client submits additional information within ten calendar days after the notice is issued, the Department shall evaluate this information along with the original data, and notify the client in writing of the Department's determination.

(3) If the client disagrees with the determination, he may request a hearing. The Department shall provide the client with instructions on how to request a hearing, including a hearing request form.

R414-29-4. Restriction Case Manager.

The client may select a physician as a Restriction Case Manager if the physician agrees to serve in that capacity and if the Department accepts the physician as a Restriction Case Manager. The Restriction Case Manager must develop a written treatment plan the client understands and accepts.

R414-29-5. Restriction Pharmacy.

The client may select a pharmacy as a Restriction Pharmacy if the pharmacy agrees to serve in that capacity and if the Department accepts the pharmacy as a Restriction Pharmacy.

R414-29-6. Changes in Restriction Case Manager or Restriction Pharmacy.

(1) If the client requests a change in the Restriction Case Manager or the Restriction Pharmacy, the request must be in writing and must verify that the new Restriction Case Manager or Restriction Pharmacy agrees to be the client's Restriction Case Manager or Restriction Pharmacy.

(2) The Department must approve all changes in the Restriction Case Manager or the Restriction Pharmacy before the client may use a different Restriction Case Manager or Restriction Pharmacy. Circumstances under which the Department may approve such a change are:

(a) client, Restriction Case Manager, or Restriction Pharmacy moves location;

(b) Restriction Case Manager or Restriction Pharmacy discontinues or limits practice;

(c) Restriction Case Manager, or Restriction Pharmacy requests a change;

(d) Department Staff Physician recommends a change, when his periodic assessment of the use of services reveals indications of possible overutilization by the restricted client, the Restriction Case Manager, or both.

(3) The Department may mandate a change in the Restriction Case Manager or Restriction Pharmacy whenever it determines that the client:

(a) continues to overutilize services despite being under restriction; or

(b) is not receiving appropriate care while being managed by the Restriction provider.

R414-29-7. Length of Restriction.

(1) All clients shall continue participation in the Restriction Program until they have demonstrated they are not overutilizing services. If a client loses Medicaid eligibility, and subsequently re-establishes Medicaid eligibility, the Department shall automatically require the client's participation in the Restriction Program.

(2) The Department shall assess the client's use of services when requested, based on the client's compliance with the Restriction Case Manager's written treatment plan and recommendations, and shall also use information such as:

(a) medical care obtained from multiple practitioners;

(b) prescriptions obtained from multiple practitioners;

(c) emergency rooms used for non-emergency services as defined in the Utah Medicaid Table of Authorized Emergency Diagnosis;

(d) use of multiple emergency rooms;

(e) concurrent use of medications in the same therapeutic class, when prescribed by different practitioners;

(f) indications of forged or altered prescriptions;

(g) use of medical services inconsistent with diagnosis;

(h) other patterns indicating overutilization.

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R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-303. Coverage Groups.

R414-303-1. A, B and D Medicaid and A, B and D Institutional Medicaid Coverage Groups.

The definitions in R414-1 apply to this rule.

(1) The Department shall provide Medicaid coverage to individuals as described in 42 CFR 435.116, 435.120, 435.122, 435.131 through 435.133, 435.135, 435.138, 435.210, 435.211, 435.301, 435.320, 435.322, 435.324, 435.340, and 435.541, 1997 ed., which are incorporated by reference. The Department shall provide coverage to individuals as described in 20 CFR 416.901 through 416.1094, 1997 ed., which is incorporated by reference. The Department shall provide coverage to individuals as required by Sections 470 through 479, 1634(b), (c) and (d), 1902(a)(10)(E) and 1902(e) of the Compilation of the Social Security Laws, 1995 ed. The Department shall provide coverage to individuals as required by Pub. L. No. 105-33, Sections 4732 and 4913 which is incorporated by reference.

(2) Current Department practices:

(a) Proof of disability includes a certification of disability from the State Medicaid Disability Office, Supplemental Security Income (SSI) status, or proof that a disabled client is recognized as disabled by the Social Security Administration (SSA).

(b) A client who earns more than $500 a month will be denied disability without being reviewed by the State Medicaid Disability Office.

(c) If a client has been denied SSI or SSA and claims to have become disabled since the SSI or SSA decision, the State Medicaid Disability Office shall review current medical information to determine if the client is disabled.

(d) The age requirement for A Medicaid is 65 years of age.

(e) For children described in Pub. L. No. 105-33, Section 4913, periodic redeterminations shall be conducted as determined by the state to assure that the child continues to meet the SSI eligibility criteria as required by such section.

(f) Coverage for qualifying individuals described in Pub. L. No. 105-33, Section 4732, is limited to the amount of funds allocated under such section for a given year. Applicants will be denied coverage when the uncommitted allocated funds are insufficient to provide such coverage.

R414-303-2. Family Medicaid and Family Institutional Medicaid Coverage Groups.

(1) The Department shall provide Medicaid coverage to individuals who are eligible as described in 42 CFR 435.110, 435.113 through 435.115, 435.211, 435.217, 435.223, 435.233.9, 435.233.90, and 435.300 through 435.310, 1997 ed., and 45 CFR 211, 1997 ed., which are incorporated by reference.

(2) The Department provides Medicaid coverage to individuals who satisfy AFDC rules for age, family composition, relationship, and deprivation of support and to families receiving financial assistance from the Emergency Work Program (EWP) as described in 45 CFR 233.39 and 233.90, 1997 ed., which is incorporated by reference.

(3) The Department elects to include children age 18 who are full-time students in a secondary school or in the equivalent level of vocational or technical training, and who may reasonably be expected to complete the program before age 19.

(4) A specified relative, other than the child's parents, may apply for assistance for a child. In addition to other Family Medicaid requirements, all the following rules apply to a Family Medicaid application by a specified relative:

(a) The child must be currently deprived of support because both parents are absent from the home where the child lives.

(b) The child must be currently living with, not just visiting, the specified relative.

(c) The parents' obligation to financially support their child shall be enforced.

(d) The income and resources of the specified relative will not be counted unless the specified relative is also included in the Medicaid coverage group.

(e) If the specified relative is currently an AFDC or Family Medicaid household, the child will be included in the case of the specified relative.

(f) The specified relative may choose to be excluded from the Medicaid coverage group. The ineligible children of the specified relative must be excluded. The specified relative will not be included in the income standard calculation.

(g) The specified relative may choose to exclude any child from the Medicaid coverage group. If a child is excluded from coverage, that child's income and resources will not be used to determine eligibility or spenddown.

(h) If the specified relative does not meet deprivation of support criteria and elects to be included in the Medicaid coverage group, the following income rules apply:

(i) The monthly gross earned income of the specified relative and spouse shall be counted.

(ii) The unearned income of the relative and the excluded spouse shall be counted.

(iii) For each employed person, $90 will be deducted from the monthly gross income.

(iv) Child care expenses necessary for employment will be deducted for only the specified relative's children. The maximum allowable deduction will be $200.00 per child under age two and $175.00 per child age two and older each month for full-time employment or $160.00 per child under age two and $140.00 per child age two and older each month for part-time employment.

(5) An American Indian child in a boarding school and a child in a school for the deaf and blind are considered temporarily absent from the household.

(6) Temporary absence from the home for purposes of schooling, vacation, or medical treatment shall not constitute non-resident status. The following situations do not meet the definition of absence for purposes of determining deprivation of support:

(a) parental absences which are caused solely by reason of employment, school, or training;

(b) an absent parent who will return home to live within 30 days from the date of application;

(c) an absent parent is the primary child care provider for the children, and the child care is frequent enough that the children are not deprived of parental support, care, or guidance.

(7) Joint custody situations are evaluated based on the actual circumstances that exist for a dependent child. The same

policy is applied in joint custody cases as is applied in other absent parent cases.

(8) The Department imposes no suitable home requirement.

(9) Medicaid assistance is not continued for a temporary period while the effects of deprivation of support are being overcome.

(10) Full-time employment nullifies a person's claim to incapacity. To claim an incapacity a parent must meet one of the following criteria:

(a) receive SSI;

(b) be recognized as 100% disabled by the Veteran's Administration or the Social Security Administration;

(c) have an incapacity that is visually observable;

(d) provide a Medical Report Form 21 completed by a physician or licensed/certified psychologist which indicates that the incapacity is expected to last at least 30 days. The medical report must also state that the incapacity will substantially reduce the parent's ability to work or care for the child.

(11) Medicaid for families with an unemployed parent may be provided when a family does not receive AFDC cash assistance.

(a) The parent who has made the most money in the previous 24 months is the primary wage earner.

(b) The Department shall not require the primary wage earner to have an employment history.

(c) The primary wage earner must not have refused work in the past 30 days.

(d) The primary wage earner must have worked less than 100 hours in the last 30 days or must have worked less than 100 hours in the 30 day period immediately preceding a point of eligibility.

(e) A person who has worked 100 hours or more in one month shall be deemed to be working less than 100 hours if that person is expected to work less than 100 hours next month and that person worked less than 100 hours in the previous two months.

R414-303-3. 12 Month Transitional Family Medicaid.

(1) The Department requires compliance with Public Law 74-271(1925).

(2) The following definition applies to this section:

(a) "Good cause" means an acceptable reason or reasons, as allowed by the Department, for not complying with one or more factors of eligibility.

(3) Current Department practices:

(a) Individuals receiving 12 month continued medical assistance are required to report quarterly gross earnings and child care expenses paid by the household.

(b) The parent must have earnings in each month of the first, second and third quarters of the 12 month continued medical assistance period or the parent must have good cause for no earnings.

(c) The household's gross income, less employment related child care paid by the household, must average 185% or less of the federal poverty level in the second and third quarters.

(d) New household members will not be added to the transitional medical assistance program if they would be considered part of the AFDC or AF/EWP household if they were applying in the current month. Newborn babies are considered household members even if they were unborn in the month the household became ineligible for AFDC. New members added to the case will lose eligibility when the household loses eligibility. Assistance shall be terminated for members who leave the household.

(e) Income from new household members must be reported at the time the household files its quarterly report. Income from new household members will be counted, regardless of program participation, if a new household member has legal responsibility for any household member receiving 12 month continued medical assistance.

R414-303-4. Four Month Transitional Family Medicaid.

(1) The Department adopts 42 CFR 435.112, 1997 ed., which is incorporated by reference.

(2) Current Department practices:

Changes in household composition do not affect eligibility for the four month extension period. New household members may be added to the case only if they would be considered part of the AFDC or AF/EWP household if they were applying in the current month. Newborn babies are considered household members even if they were unborn the month the household became ineligible for AFDC. New members added to the case will lose eligibility when the household loses eligibility. Assistance shall be terminated for household members who leave the household.

R414-303-5. Foster Care.

The Department adopts 42 CFR 435.119, 1997 ed., which is incorporated by reference. The Department requires compliance with Public Law 74-271(472).

R414-303-6. Subsidized Adoptions.

The Department adopts 42 CFR 435.119, 1997 ed., which is incorporated by reference. The Department requires compliance with Public Law 74-271(472).

R414-303-7. Child Medicaid.

(1) The Department adopts 42 CFR 435.222 and 435.301 through 435.308, 1997 ed., which are incorporated by reference.

(2) Current Department practices:

(a) The Department elects to cover all individuals under age 18 who would be eligible for AFDC but do not qualify as dependent children. Individuals who are 18 years old may be covered if they would be eligible for AFDC except for not living with a specified relative or not being deprived of support.

(b) If a child receiving SSI elects to receive Child Medicaid or receives benefits under the Home and Community Based Services Waiver, the child's SSI income shall be counted with other household income.

R414-303-8. Refugee Medicaid.

(1) The Department adopts 45 CFR 400.90 through 400.107, 1997 ed., which are modified by the Federal Register 60 FR 33584, published Wednesday, June 28, 1995, and 45 CFR 401, 1997 ed., all of which are incorporated by reference.

(2) Current Department practices:

(a) Specified relative rules do not apply.

(b) Child support enforcement rules do not apply.

(c) The sponsor's income and resources are not counted. In-kind service or shelter provided by the sponsor is not counted.

(d) Initial settlement payments made to a refugee from a resettlement agency are not counted.

(e) Refugees may qualify for medical assistance for eight months after entry into the United States.

R414-303-9. Prenatal and Newborn Medicaid.

(1) The Department requires compliance with Section 1902(a) and (l) of the Compilation of the Social Security Laws, 1993 ed., Public Law 74-271(1902)(K)(1) and Section 26-18-3.1.

(2) Current Department practices:

(a) The Department elects to impose a resource standard on Newborn Medicaid coverage for children age six to the month in which they turn age 19. The resource standard is the same as other Family Medicaid Categories.

(b) The Department elects to provide Prenatal Medicaid coverage to pregnant women whose countable income is equal to or below 133% of poverty.

(c) At the initial determination of eligibility for Prenatal Medicaid applicants who have $5,000 or more of assets, the Department will require the applicant to pay four percent of countable resources to become eligible for Prenatal Medicaid. This payment amount shall not exceed $3,367. The payment must be met with cash; incurred medical bills and medical expenses are not allowed to meet this payment.

(d) In subsequent months, through the 60 day postpartum period, the Department disregards all excess resources.

(e) This resource payment applies only to pregnant women covered under Sections 1902(a)(10)(A)(i)(IV) and 1902(a)(10)(A)(ii)(IX)(A) of the Social Security Act.

(f) No resource payment will be required when the Department makes a determination based on information received from a medical professional that social, medical, or other reasons place the woman in a high risk category.

(g) Children born after September 30, 1983 may qualify for the newborn program through the month in which they turn 19.

(h) Children born before October 1, 1983 may qualify for the Newborn program through the month in which they turn 18.

R414-303-10. PG Medicaid.

The Department requires compliance with Public Law 74-271(1902)(a)(10)(A)(i)(III).

R414-303-11. DD/MR Home and Community Based Services Waiver.

(1) The Department adopts 42 CFR 441.301 and 435.726, 1997 ed., which are incorporated by reference. The Department requires compliance with Public Law 74-271(1915)(c).

(2) Current Department practices:

(a) Medicaid Eligibility for Developmentally Disabled Mentally Retarded (DD/MR) Home and Community-Based Services is limited to mentally retarded and developmentally disabled individuals. Eligibility is limited to those referred by the Division of Services to People with Disabilities (DSPD) or any DD/MR worker.

(b) Medicaid eligibility for DD/MR Home and Community-Based Services is limited to individuals who qualify for a regular Medicaid coverage group.

(c) A client's resources must be equal to or less than the regular Medicaid resource limit. The spousal impoverishment resource provisions for married, institutionalized individuals in R414-305-3 apply.

(d) All of the client's income is countable.

(e) To determine spenddown the Department will deduct $500 of earned income for disabled individuals and $810 for blind individuals.

(f) Deductions for any health insurance or medical expenses for the waiver eligible client shall be allowed.

(g) The spousal impoverishment provisions for Institutional Medicaid income apply.

(h) The client obligation for spenddown will be the amount of income that exceeds the personal needs allowance after allowable deductions.

(i) Parental and spousal income shall be counted only if the client is given a cash contribution from a parent or spouse.

(j) A client who transfers resources for less than fair market value for the purpose of obtaining Medicaid may be ineligible for an indefinite period of time. If the transfer occurred prior to August 11, 1993, the period of ineligibility shall not exceed 30 months.

R414-303-12. Aging Home and Community Based Services Waiver.

(1) The Department adopts 42 CFR 441.301 and 435.726, 1997 ed., which are incorporated by reference. The Department requires compliance with Public Law 74-271(1915)(c).

(2) Current Department practices:

(a) Medicaid eligibility for Aging Home and Community-Based Services is limited to individuals eligible for Aged Medicaid, except that the spousal impoverishment resource limits apply, who could qualify for skilled nursing home care. Eligibility is limited to those referred by the Division of Aging or a county aging worker.

(b) A client's resources must be equal to or less than the regular Medicaid resource limit. The spousal impoverishment resource provisions for married, institutionalized individuals in R414-305-3 apply.

(c) All income is counted. Spenddown is determined counting only the client's income less allowable deductions.

(d) The spousal impoverishment provisions for Institutional Medicaid income apply. Income deductions include health insurance premiums, medical expenses, a percentage of shelter costs and an aging waiver deduction.

(e) A client who transfers resources for less than fair market value for the purpose of obtaining Medicaid may be ineligible for an indefinite period of time. If the transfer occurred prior to August 11, 1993, the period of ineligibility shall not exceed 30 months.

(f) Spousal income shall be counted only if the client is given a cash contribution from a spouse.

R414-303-13. Technologically Dependent Child Waiver/Travis C. Waiver.

(1) The Department will operate this program statewide initially with a limited number of available slots.

(2) Current Department practices:

(a) Eligibility for services under this waiver require that the individual have a medical need. This means that the individual must be in need of skilled nursing or rehabilitation services and of being dependent on medical technology for life support. A medical need determination will be established through the Department of Health, Family Health Services.

(b) To qualify for services under this waiver, the individual must be considered a child. This means the individual must be under age 21. An individual is considered to be under age 21 until the month after the month in which the twenty first birthday falls.

(c) All other eligibility requirements follow the rules for the DD/MR Home and Community Based Services Waiver found in R414-303-11.

R414-303-14. Persons with Brain Injury Home and Community Based Services Waiver.

(1) The Department will operate this program statewide initially with a limited number of available slots.

(2) Current Department practices:

(a) Eligibility for services under this waiver require that the individual has medical need resulting from a brain injury. This means that the individual must be in need of skilled nursing or rehabilitation services as a result of the damage sustained because of the brain injury. A medical need determination will be established through the Department of Human Services, Division of Services for People with Disabilities.

(b) To qualify for services under this waiver, the individual must be 18 years old or older. The person is considered to be 18 in the month in which the 18th birthday falls.

(c) All other eligibility requirements follow the rules for the Aging Home and Community Based Services Waiver found in R414-303-12.

(d) The spousal impoverishment provisions for Institutional Medicaid income apply, with one exception: An individual who has a dependent family member living in the home is allowed a deduction for a dependent family member even if the individual is not married or is not living with the spouse.

R414-303-15. Personal Assistance Waiver for Adults with Physical Disabilities.

(1) The Department adopts 42 CFR 435.726 and 435.217, 1997 ed., which are incorporated by reference. The Department requires compliance with Section 1915(c) of the Compilation of the Social Security Laws, 1995 ed.

(2) The waiver shall be limited to individuals 18 years of age and over.

(3) The individual must meet non-financial criteria for Aged, Blind, or Disabled Medicaid.

(4) A client must qualify for a nursing home level of care. Eligibility is limited to those referred by the Division of Services to People with Disabilities and determined medically eligible by the Bureau of Medicare/Medicaid Program Certification and Resident Assessment.

(5) A client's resources must be equal to or less than $2000. The spousal impoverishment resource provisions for married, institutionalized in R414-305-3 apply.

(6) Countable income is determined using income rules of Aged, Blind, or Disabled Institutional Medicaid. After determining countable income, eligibility is determined counting only the gross income of the client.

(7) The client's income can not exceed three times the SSI benefit amount payable under Section 1611(b)(1) of the Social Security Act, except that individuals with income over this amount can spenddown to the Medicaid Basic Maintenance Standard for a household of one.

(8) Transfer of resource provisions described in R414-305-506 apply to this rule.

KEY: income, coverage groups*
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R426. Health, Health Systems Improvement, Emergency Medical Services.

R426-1. Ambulance Rules.

R426-1-1. Authority and Purpose.

(1) This rule is established under Title 26, Chapter 8.

(2) The purpose of this rule is to provide for the establishment of uniform minimum standards to be met by those providing ambulance services in the state of Utah and for the control, inspection, and regulation of all persons performing these services and their ambulance equipment, so as to promote the health and safety of the people of this state.

R426-1-2. Definitions.

As used in rule R426-1:

(1) Advanced life Support Personnel means Emergency Medical Technicians or other persons certified by the Department, in accordance with R426-1, who provide advanced life support.

(2) Advanced Life Support means an advanced level of pre-hospital and inter-hospital emergency care that includes basic life support functions including cardiopulmonary resuscitation (CPR) plus some or all of the following techniques or procedures: cardiac monitoring, manual cardiac defibrillation, administration of specific medications, drugs, and solutions, use of adjunctive medical devices, trauma care, and other techniques and procedures authorized by the committee.

(3) Agency means any department, division, board, council, committee, authority, or agency of the state of Utah, or any of its political subdivisions.

(4) Ambulance means any privately or publicly owned land vehicle designed, constructed, or modified and equipped and is intended to be used for and is maintained or operated for transportation upon the streets or highways, in this state of individuals who are sick, injured, wounded, or otherwise incapacitated or helpless.

(5) Ambulance Service means transportation and care of patients by ambulance.

(6) Basic Life Support means prehospital and interhospital emergency care which includes some or all of the techniques and procedures taught in a department-approved Emergency Medical Technician-basic training course.

(7) Basic Life Support Personnel means Emergency Medical Technicians, emergency medical care first responders and other certified persons as specified by the committee who are engaged in the provision of basic life support.

(8) EMS Committee means the State Emergency Medical Services (EMS) Committee.

(9) Department means the Utah Department of Health.

(10) Director means the Director of the Department of Health.

(11) Emergency Medical Technician-Basic (EMT) means an individual who has completed a basic training program approved by the Department who is certified by the Department as qualified to render services enumerated in R426-1 in accordance with his level of training.

(12) Emergency Medical Technician-Intermediate (EMT-I) means an individual who has completed an advanced life support training program approved by the Department who is certified by the Department as qualified to render services enumerated in R426-1 in accordance with his level of training.

(13) Advanced Life Support Training Module means a skill enhancement training program developed by the Department and approved by the committee for use by EMTs. The module currently approved is IV Infusion, with modular certification identified as IV, which includes pediatric vascular access.

(14) EMT-Advanced means an EMT-I or an EMT with IV certification.

(15) EMT-Paramedic (EMT-P) means an Emergency Medical Technician (EMT) who has completed an advanced life support training program approved by the Department who is certified by the Department as qualified to render services enumerated in R426-3.

(16) License means the authorization issued by the Department to a person to provide ambulance service in the state.

(17) License Officer means the Director of the Department of Health or his designee.

(18) Medical Control means direction and advice provided by medical personnel at a designated medical facility to pre-hospital basic or advanced life support personnel by radio or telephonic communications.

(19) Net income means the sum of net service revenue, plus other operating revenue and subsidies of any type, less operating expenses, interest expense, and income tax expense.

(20) Total assets means one-half of the assets at the beginning of the ambulance service fiscal year, plus one-half of the assets at the end of the fiscal year.

(21) Net service revenue means gross charges less adjustments to recognize the difference, if any, between the established rate that was charged by the ambulance service, and the amounts paid, or to be paid, by third party payors such as Worker's Compensation, Medicare, Medicaid, Blue Cross or other insurance carriers, where the ambulance service accepts the amount of the payment by the third party as full payment.

(22) Patient means an individual who, as the result of illness or injury, needs immediate medical attention, whose physical or mental condition presents an imminent danger of loss of life or significant health impairment, or who may be otherwise incapacitated or helpless as a result of a physical or mental condition.

(23) Permit means the authorization issued by the Department in respect to an ambulance used or to be used to provide ambulance service in the state.

(24) Person means any individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, agency, or organization of any kind.

(25) Resource Hospital means a facility designated by the EMS Committee which assumes medical leadership and medical control for the provision of advanced life support services in a specified geographical area.

R426-1-3. Requisites for Providing Ambulance Service.

(1) An ambulance license and ambulance permit will be issued for a period of three years from the date of issue and will remain valid for the period unless revoked or suspended by the Department. Annual inspections will be conducted to assure

compliance. The Department may adjust the three year licensure period to adjust to revised recertification schedules.

(2) License Process - An application for an original license, renewal license, expanded license, or change in ownership, shall be made to the license officer on forms provided by the Department and shall contain as a minimum the following:

(a) Financial statement of ambulance service operating revenues and expenses for the previous fiscal year. Services operating for a profit shall also provide a balance sheet and a description of any judgments, executions or liens against the assets of the applicant. The financial information provided shall clearly demonstrate that the applicant has adequate resources to provide the services proposed.

(b) Articles of Incorporation, or certificate of good standing or renewal license, if incorporated.

(c) The name and address of the owner of the ambulance service or proposed ambulance service.

(d) The name under which the applicant is doing business or proposes to do business.

(e) The training and experience of the applicant in the transportation and care of patients.

(f) A description and general location of each ambulance or boat to be used as an ambulance, including the make, model, year of manufacture, motor and chassis number, and the color scheme, insignia, name or monogram, or other distinguishing characteristics.

(g) The geographical area to be served, and the location of the place or places from which the ambulance service intends to operate. If the application is for an original or expanded license and proposes to serve a geographical area that is already served by existing licensees, then the Committee shall evaluate whether public need and necessity supports the proposed service, as opposed to continuation of the existing service. If the Committee finds that public need and necessity would be served by the change, then the Department shall modify all existing licenses that previously served the overlapping geographical area, to remove the overlapping authority from existing licenses, effective on the date that the new license is issued. If the Committee does not find that public need and necessity would be met, then the application shall be denied, and existing licenses shall continue without change.

(h) Name of the training officer who will assume responsibility for the ambulance personnel continuing education program.

(i) EMT-Advanced ambulance service licensure - Requirements noted as follows are in addition to regular ambulance service licensure:

(i) Provide the name of the physician medical director who shall develop and review treatment protocols, assess field performance and critique ambulance runs. This provision also applies to services using pneumatic trousers.

(ii) Receive Department approval for the use of EMT-I optional skills and drugs, esophageal obturator airway, intraosseous infusion.

(iii) Receive Department approval for the use of EMT-IV optional skill, intraosseous infusion.

(iv) Secure written support from all related agencies, including the proposed or designated resource hospital before submitting an application.

(v) Secure written support from the physician medical director and all hospital physicians who provide EMT medical control for the ambulance service area.

(vi) Agree to abide by resource hospital medical leadership and medical control.

(vii) Agree to cooperate with the resource hospital to assure provision of continuing medical education for EMT-advanced personnel in accordance with Department recertification standards.

(3) Inspection Process - Upon receipt of an application for ambulance service license, the state license officer shall comply with requirements in Title 26, Chapter 8. Upon approval by the Department of the application, but before issuing a license to the new ambulance service, the license officer shall cause to be inspected the ambulance, equipment and the personnel training qualifications designated in each application hereunder to determine compliance with R426-1.

(4) Change of Ownership or Management. - Upon change of ownership or management, an ambulance license and ambulance permit shall terminate and the new owner or operator shall be required to file within ten business days of acquisition an application for an ambulance license and ambulance permit in conformance with all requirements for an original.

(5) Ambulance Vehicle Requirements.

(a) An application for an original or renewal ambulance permit shall be made to the license officer, upon forms prescribed by him. No ambulance shall be used in providing ambulance service unless there is in effect, with respect to it, a currently valid permit. Each ambulance shall carry a decal showing the permit expiration date and permit number issued by the Department as evidence that the ambulance identified thereon has been inspected and determined to be in compliance with R426-1.

(b) Ambulances shall be maintained in good mechanical repair and sanitary condition on suitable premises, properly equipped, maintained and operated so as to contribute to the general well-being of patients.

(c) All carriers providing emergency ambulance service, shall notify the Department whenever the general location of an ambulance is changed.

(d) Ground ambulances shall use warning devices, such as lights and sirens, in accordance with Utah law.

(e) Ambulance Manufacturing Specifications - An ambulance permit for a new or replacement vehicle shall be issued only if the applicable ambulance complies with the following specifications:

(i) Van or Truck Chassis.

(A) New Vehicles - Federal GSA Specification No. KKK-A-1822-C, dated January 1, 1990. This document is published by the General Services Administration, Washington, D.C., and copies may be obtained from the Bureau of Emergency Medical Services.

(B) Used Vehicles manufactured prior to July 10, 1991 - Federal Specification No. KKK-A-1822, as amended, in effect at the time of manufacture or purchased under Utah specifications in effect between January 1986, and July 10, 1991.

(ii) Special consideration will be given by the EMS

Committee to communities with limited populations or unique problems for use of ambulance vehicles which do not meet the above specifications.

(f) Ambulance Driver Requirements - The driver of each ambulance, while transporting an emergency patient, shall comply with the following requirements:

(i) Destination Restriction - In the absence of physician direction, specific area protocols or other decisive factors to the contrary, a ground ambulance driver shall transport emergency patients to the nearest accessible medical facility equipped, staffed and prepared to receive emergency cases and administer emergency medical care appropriate to the needs of the patient.

(ii) Siren and Red Warning Light Restrictions - Ground ambulance drivers shall not display red warning light and use siren except when:

(A) Responding to an emergency call;

(B) Engaged in lifesaving services at the scene; or

(C) Transporting emergency patients who are classified as "emergent" by the ambulance attendant on the ambulance trip report form.

(g) Ambulance Accident Reports - All licensed providers shall send a copy of the official accident report to the Department whenever a permitted vehicle is involved in an accident while responding to or transporting a patient.

(6) Equipment and Supplies

(a) In accordance with the basic or advanced life support licensure level granted an ambulance service, minimum quantities of supplies and equipment shall be carried on each of the service's ambulance vehicles as described in "R426 Appendix". This list may be modified at the discretion of the Department as other needs or new methodology become known. All equipment shall be stored or secured in a manner as to prevent its movement during a crash.

(b) Equipment rated "not recommended" or "unacceptable" by the American College of Surgeons is not approved under R426-1. Current ratings will be provided by the Bureau of Emergency Medical Services on request.

(c) No advanced life support equipment, supplies or drugs may be carried on an ambulance where the use of that equipment by an EMT or EMT-Paramedic is not approved by R426-1. If a medical director wishes to have additional ALS equipment, supplies or drugs carried on an ambulance within his jurisdiction for physician or licensed nurse practitioner with Advanced Cardiac Life Support (ACLS) certification to use, a request for approval shall be submitted by the medical director to the EMS Committee at least 30 days prior to the Committee's regular scheduled quarterly meeting. If approved, the responsibility for use and maintenance of equipment falls solely on the requesting physician and the physician's associates.

(d) Special equipment considerations:

(e) Critical Care Transport - Ground ambulances used in conjunction with hospital critical care transport teams are exempt from the above requirements but shall carry equipment appropriate to the specific needs of the patient.

(7) Safety - Safety equipment shall be carried and maintained in working condition.

(a) Ambulances shall be equipped with approved safety belts for the driver and all passengers.

(b) Ground ambulances shall display a current safety inspection decal on the lower left hand corner of the left rear window.

(c) Water ambulances shall comply with all current state boating regulations.

(8) Communications

(a) All ambulances shall be equipped with a two-way radio capable of ambulance to hospital communication on 155.340 Mhz.

(b) All advanced life support services shall have communication capabilities approved by the Department which allow ready communication between EMTs in the field and a medical control registered nurse or physician representing the designated resource hospital.

(c) Utah EMS microwave system:

(i) A statewide microwave system is available, limited to the following EMS purposes:

(A) Medical assistance and notification;

(B) Back up advanced life support medical control;

(C) In-transit ground or air ambulance to hospital medical communications;

(D) Utah Department of Health disaster coordination; and

(E) Other uses approved by the Department.

(ii) Communication and control of microwave access shall be governed by Department operational protocols.

(iii) EMT medical assistance or ALS medical control may be provided only when communications with local medical authority or medical director are not available, or at his recommendation.

(iv) Back up medical assistance for ALS medical control is authorized through Department designated hospital emergency departments who routinely provide paramedic medical control. Participating hospitals shall be pre-assigned by the Department to collectively provide services 24 hours per day, seven days per week.

(v) Back up medical control to the requesting EMT shall be limited to services authorized in R426-1. Accordingly, back up medical control physician should request EMT certification level, name, EMT number and service represented.

(vi) Emergency Departments providing back up medical control shall record all advanced life support transmissions.

(9) Sanitation.

(a) The ambulance shall be maintained in a clean condition with interior being thoroughly cleaned after each use as appropriate.

(b) Linens shall be clean and changed after each use.

(c) Equipment:

(i) All equipment except disposable items, shall be so designed, constructed, and made of materials that under normal conditions and operations, it shall be durable and capable of withstanding repeated cleaning.

(ii) Equipment intended for one use only, shall not be reused.

(iii) Equipment shall be maintained in working condition and equipment checks documented according to local hospital standards.

(iv) Equipment shall be cleaned after each use.

(v) Sanitizing or sterilization of equipment shall be accomplished prior to use on a subsequent run.

(vi) Equipment shall be stored in a protected manner and

be readily accessible.

(10) Records -

(a) Incident Records - A record shall be made for each trip on forms or data format specified by the Department. Copies shall be transmitted in accordance with instructions provided by the Department. Storage of forms and use of information contained therein shall assure patient confidentiality. Copies of the above trip records shall be maintained and stored by each ambulance service for a minimum of ten years. The method of storage shall lend itself to ready retrieval of specified records.

(b) Personnel Records - A personnel file shall be maintained for ambulance personnel which shall include their qualifications and training.

(c) EMT-D Incident Cassette Tapes - Tapes accompanied by a written critique form shall be maintained for a minimum of ten years.

(d) Records required herein shall be available for inspection by representatives of the Department.

R426-1-4. Required Vehicle Insurance Coverages.

(1) Licensee shall provide the Department with a copy of his certificate of insurance, showing proof of his ability to respond to damages, due to operation of the vehicle, in the manner and minimum amounts specified below:

(a) Liability insurance in the amount of $100,000 for each individual claim and $300,000 for total claims for personal injury from any one occurrence.

(b) Liability insurance in the amount of $25,000 for property damage from any one occurrence.

(2) Insurance shall be obtained from an insurance company authorized to write liability coverage in the state of Utah or through a self-insurance program.

(3) Any coverage changes shall be reported by the licensee to the Department within 60 days of the date of change.

R426-1-5. Personnel.

(1) Ground ambulances, while providing ambulance services, shall have the following minimum complement of personnel who shall meet all requirements as outlined in this Ambulance Rule:

(a) Two attendants, each of whom is an Emergency Medical Technician, EMT-Paramedic, licensed medical doctor or registered nurse under Title 58, and

(b) A driver, 18 years of age or older, who is the holder of a valid driver's license. If the driver is also an EMT, EMT-I, EMT-Paramedic, licensed medical doctor or registered nurse under Title 58, the driver shall qualify as one of the two attendants required.

(2) Ambulance services authorized by the Department to provide advanced life support shall assure that at least one EMT-Advanced, EMT-Paramedic, nurse, or physician responds on each call.

(3) An applicant for basic EMT or ambulance driver shall provide the information required on the application, including his social security number.

(4) The Department shall exclude from EMT certification an individual who may pose an unacceptable risk to public health and safety, as indicated by his criminal history. The Department shall conduct a background check on each individual who seeks to certify or recertify as an EMT.

(a) An individual convicted of certain crimes presents an unreasonable risk and the Department shall deny all applications for certification or recertification by individuals convicted of the following crimes:

(i) Sexual misconduct if the victim's failure to affirmatively consent is an element of the crime, such as forcible rape.

(ii) Sexual or physical abuse of children, the elderly or infirm, such as sexual misconduct with a child, making or distributing child pornography or using a child in a sexual display, incest involving a child, assault on an elderly or infirm person.

(iii) Abuse, neglect, theft from, or financial exploitation of a person entrusted to the care or protection of the applicant, if the victim is an out-of-hospital patient or a patient or resident of a health care facility.

(iv) Crimes of violence against persons, such as aggravated assault, murder or attempted murder, manslaughter except involuntary manslaughter, kidnaping, robbery of any degree; or arson; or attempts to commit such crimes.

(b) Except in extraordinary circumstances, established by clear and convincing evidence that certification or recertification will not jeopardize public health and safety, the Department shall deny applicants for certification or recertification in the following categories:

(i) Persons who are convicted of any crime not listed in (a) and who are currently incarcerated, on work release, on probation or on parole.

(ii) Conviction of crimes in the following categories, unless at least three years have passed since the conviction or at least three years have passed since release from custodial confinement, whichever occurs later:

(A) Crimes of violence against persons, such as assault;

(B) Crimes defined as domestic violence under Section 77-36-1;

(C) Crimes involving controlled substances or synthetics, or counterfeit drugs, including unlawful possession or distribution, or intent to distribute unlawfully, Schedule I through V drugs as defined by the Uniform Controlled Dangerous Substances Act; and

(D) Crimes against property, such as grand larceny, burglary, embezzlement or insurance fraud.

(c) The Department shall deny certification or recertification to individuals convicted of crimes, including DUIs, but not including minor traffic violations chargeable as infractions after consideration of the following factors:

(i) The seriousness of the crime.

(ii) Whether the crime relates directly to the skills of prehospital care service and the delivery of patient care.

(iii) Amount of time that has elapsed since the crime was committed.

(iv) Whether the crime involved violence to or abuse of another person.

(v) Whether the crime involved a minor or a person of diminished capacity as a victim.

(vi) Whether the applicant's actions and conduct since the crime occurred are consistent with the holding of a position of public trust.

(vii) Total number of arrests and convictions.

(viii) Whether the applicant was truthful regarding the crime on his/her application.

(d) Certified EMS personnel must notify the Department of any arrest or conviction. The Department may suspend, decertify, or place on probation anyone who does not notify the Department within 30 days of the arrest or conviction.

(e) The Department may decertify or suspend certification, or place a person on probation for any of the above violations.

(f) The Department may require an EMT to submit to a background check upon Department request. The Department may decertify or suspend certification, or place on probation an EMT who refuses to submit to a background check.

(5) The Department may refuse to issue a certification or recertification, or suspend or revoke a certification for any of the following causes:

(a) Habitual or excessive use or addiction to narcotics or dangerous drugs. Refusal to take a drug test administered by an EMS employer or the department is grounds for refusal, suspension or certification revocation by the Department of Health.

(b) Habitual abuse of alcoholic beverages or being under the influence of alcoholic beverages while on call or on duty as an Emergency Medical Technician or while driving any emergency vehicle.

(c) Failure to comply with the emergency medical technician training certification or recertification requirements of this rule.

(d) Fraud or deceit in applying for or obtaining a certification or fraud, deceit, incompetence, patient abuse, theft, or dishonesty in the performance of duties and practice as an emergency medical technician.

(e) Involvement in the unauthorized use or removal of narcotics, drugs, supplies or equipment from any emergency vehicle or health care facility.

(f) Performing procedures or skills beyond the level of certification or violation of laws pertaining to medical practice and drugs.

(g) Conviction of a felony, misdemeanor, or a crime involving moral turpitude, excluding minor traffic violations chargeable as infractions.

(h) Mental incompetence as determined by a court of competent jurisdiction.

(i) Demonstrated inabilities and failure to perform adequate patient care.

(j) For good cause, including conduct which is unethical, immoral, or dishonorable.

(6) An individual who wishes to be certified as a Basic Emergency Medical Technician (EMT), shall:

(a) submit a completed application form, including social security number, to the Department;

(b) be 18 years of age or older;

(c) submit to a background investigation;

(d) complete a Department-approved EMT course;

(e) display technical competence during field and clinical training;

(f) successfully complete the Department written and practical examinations; and

(g) complete all requirements for certification within 90 days from course completion date. The Department may extend the time limit to individuals who demonstrate good cause based on extenuating circumstances.

(7) An individual who wishes to be certified as an Emergency Medical Technician - Intermediate (EMT-I), shall:

(a) have 12 months of field experience as a certified EMT, however, the 12 month period may be reduced to six months with special authorization from the Department based upon a written request from the resource hospital medical director showing the need for advanced level EMTs;

(b) be currently certified as an EMT in Utah;

(c) complete a Department-approved EMT-I course;

(d) display technical competence during field and clinical training;

(e) successfully complete the Department written examination and clinical practical evaluation; and

(f) complete all requirements for certification within 90 days from course completion date; however, the Department may extend the time limit to individuals who demonstrate good cause based on extenuating circumstances.

(8) An individual who wishes to be certified in EMT-IV Infusion (IV) shall:

(a) have 12 months of field experience as a certified EMT; however, the 12 month period may be reduced to six months with special authorization from the Department based upon a written request from the resource hospital medical director showing the need for advanced level EMTs;

(b) be currently certified as an EMT in Utah;

(c) complete the Department-approved IV training module which includes pediatric vascular access;

(d) successfully complete the Department written examination and clinical practical evaluation; and

(e) Complete all requirements for certification within 90 days from course completion date; however, the Department may extend the time limit to individuals who demonstrate good cause based on extenuating circumstances.

(9) Recertification is required every three years. This period may be modified by the Department to standardize EMT recertification cycles.

(a) An EMT-Basic who wishes to recertify shall:

(i) submit a completed application form, including social security number, to the Department;

(ii) submit to a background investigation;

(iii) submit to the Department a current cardiopulmonary resuscitation card or certificate meeting standards approved by the Department;

(iv) submit to the Department evidence of having completed 60 hours of Department-approved CME during the previous three year period, in accordance with the Recertification Protocol for Emergency Medical Technicians;

(v) successfully complete the Department EMT written and practical examinations;

(vi) Certification as an EMT-P or an EMT-I will fulfill EMT recertification requirements. Recertification will be for a concurrent time period.

(b) An EMT-Intermediate who wishes to recertify shall:

(i) complete all EMT-Basic recertification requirements;

(ii) successfully complete the Department written and practical Intermediate examination;

(iii) submit a letter to the Bureau from the resource hospital medical director recommending the individual for recertification and verifying the individual's demonstrated proficiency in the following EMT-I skills:

(A) initiating and terminating intravenous infusion, including pediatric vascular access;

(B) insertion and removal of intraosseous needles;

(C) insertion and removal of esophageal obturator airway; and

(D) administration of medications via intramuscular, subcutaneous, and intravenous routes.

(c) An EMT-IV who wishes to recertify shall:

(i) successfully complete EMT-Basic recertification requirements;

(ii) submit a letter to the Bureau from the resource hospital medical director recommending the individual for recertification and verifying the individual's demonstrated proficiency in EMT-IV skills; and

(iii) successfully complete the Department IV written examination.

(10) Emergency Medical Technicians who permit their certification to lapse for a period of less than three years, and who wish to regain it shall:

(a) submit a completed application, including social security number, to the Department;

(b) submit to a background check;

(c) submit to the Department evidence of having completed 60 hours of Department-approved CME within three years prior to application, in accordance with the Recertification Protocol for Emergency Medical Technicians;

(d) submit a current cardiopulmonary resuscitation card or certificate meeting standards approved by the Department;

(e) successfully complete the Department's written and practical examination;

(11) Those individuals who permit their EMT-I certification to lapse and wish to regain it shall:

(a) submit a letter to the Department requesting consideration for re-entry into the certification program, which shall be accompanied by the following items:

(i) completed recertification application including social security number;

(ii) letter of recommendation from the ambulance or rescue service with which they are affiliated;

(iii) letter of recommendation including results of a structured oral examination, from the resource hospital medical director verifying proficiency in EMT-I skills; and

(iv) evidence of completion of twenty hours of Department-approved CME for each year away from the program.

(b) Upon Department approval for re-entry, complete the written and practical recertification examination.

(12) Those individuals who permit their IV certification to lapse and wish to regain it shall:

(a) submit a completed recertification application to the Department, including social security number;

(b) be currently certified as a Utah EMT;

(c) submit a letter of recommendation including results of a structured oral examination from the resource hospital medical director verifying proficiency in EMT-IV skills; and

(d) successfully complete the Department's written examination.

(13) The Department may grant reciprocity for EMT-Basic applicants certified outside of the State of Utah based on the following considerations:

(a) Applicants shall submit to the Department a completed application, including social security number.

(b) Applicants shall provide the Department with a current copy of their Emergency Medical Technician Certification.

(c) Applicants shall submit to a background check.

(d) Applicants shall provide verification to the Department that the certifying course meets the standards established by the Department.

(e) Applicants shall successfully complete the Department's written and practical examinations.

(14) Reciprocity for advanced level applicants certified outside of the state of Utah is, at the discretion of the Department, based on the following considerations:

(a) Applicants shall provide the Department with a copy of their current Emergency Medical Technician Certification.

(b) Applicants shall provide verification to the Department that the certifying course meets the standards established by the Department.

(c) Applicants shall successfully complete the Department applicable Advanced Level certification written and practical examinations.

(15) Persons who fail any part of the written or practical certifying examination may retest based upon the following:

(a) The applicant must request a re-examination.

(b) The applicant must take the re-examination after notification of failure of the initial examination.

(c) Only one re-examination is permitted.

(d) Applicants who fail the EMT-Basic re-examination must take a complete EMT training course to be eligible for further examination.

(e) Applicants failing the IV Infusion re-examination must take that complete module to be eligible for further examination.

(16) Recertification Examination Standards

(a) An EMT-Basic who fails any part of the written or practical recertification examination may retest based on the following:

(i) The applicant must request a re-examination.

(ii) The applicant must re-take the examination after notification of failure of recertification examination.

(iii) Only one re-examination is permitted.

(iv) Applicants who fail the recertification re-examination must take a complete EMT training course.

(b) An EMT-I, IV who fails any part of the written or practical recertification examination may retest based on the following:

(i) The applicant must request a re-examination.

(ii) The applicant must re-take the examination after notification of failure of recertification examination.

(iii) Only one re-examination is permitted.

(iv) Applicants who fail the recertification re-examination must retake the complete EMT-I training course to be eligible for further examination.

(17) An individual who teaches EMT training programs shall:

(a) Be certified as an Emergency Medical Technician Instructor, or instructor specialist by the Department, or be a licensed physician under Title 58;

(b) Successfully complete an instructor certification course.

(18) An individual who teaches EMT-Advanced training programs shall be licensed under Title 58 as a physician or registered nurse, or be approved by the Department.

(19) An individual who teaches pediatric vascular courses must be a licensed physician or registered nurse who has completed a Department-approved pediatric advanced life support course or who has completed the Department Emergency Medical Services for Children instructor course.

(20) When responding to a medical emergency, EMTs shall display their Department-approved certification identification on outer clothing to identify competency level at the scene. EMTs representing volunteer ambulance services shall comply with this requirement to the extent practicable. Any person displaying a Utah EMT certification identification, who is not so certified, is guilty of a Class B misdemeanor, as provided in 26-8-7(1) and 26-8-15.

(21) An EMT shall be under medical control of a physician representing a designated resource hospital. When EMTs arrive at the scene of an injury or illness, they must secure radio or telephonic contact with their resource hospital to establish medical control as quickly as possible. If radio or telephonic contact cannot be obtained, the EMT must so indicate on the EMS report form and must follow local written protocol. If there is a physician at the scene who wishes to assist or provide medical direction to the EMT, the EMT shall follow his instructions, but only until communications are established with the physician at the resource hospital. Once communications are established with the resource hospital physician, the EMT shall take orders from him. If the physician at the scene wishes to continue directing EMT activities, the EMT shall place the at-scene physician in radio contact with the resource hospital physician. The resource hospital physician may (1) allow the physician at the scene to assume or continue medical control, (2) retain EMT medical control, but allow the physician at the scene to assist, or (3) retain medical control with no participation by the on-scene physician. If option (1) is followed, all orders given to EMTs by the at-scene physician shall be repeated over the radio or telephone by the resource hospital physician for evaluation and recording. If, in the judgment of the resource hospital physician who is monitoring and evaluating the at-scene medical control, the care is inappropriate to the nature of the medical emergency, the resource hospital physician may reassume medical control of the at-scene EMTs.

R426-1-6. Compartmentalized Pneumatic Trousers.

(1) Training Requirements - EMTs shall be trained in the use of Compartmentalized Pneumatic Trousers in the Department approved EMT training course.

(2) Operational Procedures.

(a) Compartmentalized pneumatic trousers shall be applied and removed only by personnel trained in their use.

(b) Prior to applying compartmentalized pneumatic trousers the Emergency Medical Technician shall communicate with a licensed physician or registered nurse, trained in their use, for application approval. If communication is not possible, the Emergency Medical Technician may proceed in accordance with standing orders described in R426-1-6-(3).

(3) Standing Orders

(a) Written Standing Orders shall be signed by a licensed physician trained in the use of compartmentalized pneumatic trousers.

(b) Standing orders shall be on file at the local ambulance or rescue service and include:

(i) Indications for use;

(ii) Contraindications for use;

(iii) Application; and

(iv) Removal.

R426-1-7. EMT-Advanced Standards.

(1) Resource Hospital - Advanced Life Support (ALS) system control shall be vested in a regional resource hospital designated by the EMS Committee. Resource hospital designation process - A hospital desiring to be designated as a regional resource hospital shall complete an application form provided by the Department which assures that the following rules will be met:

(a) The hospital will assume medical leadership for the provision of advanced life support services in a specified geographical area.

(b) The hospital will designate a physician as medical director who will assume overall medical direction of the regional advanced life support system.

(c) The hospital will designate an ALS medical control committee which will meet at least quarterly to review and evaluate EMT-Advanced emergency runs, continuing medical education needs and program administration problems. Committee members shall include resource hospital medical director, hospital nurse representative, hospital administration representative, ambulance and emergency services representatives. Minutes shall be kept and filed for Department review.

(d) The hospital will assume management responsibility for EMT-Advanced training programs and will conduct them only upon written authorization by the Department and in accordance with Departmental curriculum and guidelines.

(e) The hospital will assume responsibility for providing didactic and clinical CME for EMT-Advanced personnel within their region.

(f) The hospital will assure that medical control will be available to EMT-Advanced personnel 24 hours per day via department approved telecommunications. Control shall be as follows:

(i) EMT-IV and EMT-I (excluding drug orders), direct voice communications with a licensed physician or a registered nurse in voice contact with a licensed physician or by voice communication with responding paramedics as per local medical control protocol.

(ii) EMT-IV and EMT-I may initiate intraosseous infusion after direct voice communications with a licensed physician or with a registered nurse who is in voice contact with a licensed physician. Standing orders for use of intraosseous infusion are not sufficient.

(iii) Drug orders shall be given only by a registered nurse

who is currently certified by the American Heart Association in Advanced Cardiac Life Support (ACLS), or by a physician.

(g) The medical director may provide to Advanced EMTs signed written standing or contingency orders for the use of IVs and esophageal obturators to deal with extraordinary circumstances or when medical control via telecommunications is not available, however, routine system operation shall be in accordance with R426-1-7(1)(f).

(h) The hospital will maintain tape recordings of all EMT-Advanced cardiac drug order transmissions.

(i) The hospital shall provide patient data identified by the department. This data shall be submitted at least quarterly to the department. Corporate submittal is preferred. The data must be submitted electronically in a format acceptable to the department.

(j) The minimum data set that hospitals are required to submit comes from the UB92 file format. The required data elements are:

Unique Patient Control Number
Record Type
Provider Identifier (hospital)
Patient Social Security Number
Patient Control Number
Type of Bill
Patient Name
Patient's Address (postal zip code)
Patient Date of Birth
Patient's Gender
Admission Date
Admission Hour
Discharge Hour
Patient's Medical Record Number
Revenue Code 1 ("450" in at least one of the Rev code fields)
Total Charges by Revenue Code 1 ("001" last total Charge Field, is sum)
Revenue Code 2 ("450" used for record selection)
Total Charges by Revenue Code 2 ("001" sum of all charges)
Primary Payer Identification
Estimated Amount Due
Secondary Payer Identification
Estimated Amount Due
Tertiary Payer Identification
Estimated Amount Due
Patient Estimated Amount Due
Principal Diagnosis Code
Secondary Diagnosis Code 1
Secondary Diagnosis Code 2
Secondary Diagnosis Code 3
Secondary Diagnosis Code 4
Secondary Diagnosis Code 5
Secondary Diagnosis Code 6
Secondary Diagnosis Code 7
Secondary Diagnosis Code 8
External Cause of Injury Code (E-Code)
Procedure Coding Method Used
Principal Procedure
Secondary Procedure 1
Secondary Procedure 2
Secondary Procedure 3
Secondary Procedure 4, and
Secondary Procedure 5

(k) Where medications are approved, the hospital will provide initial supplies and replenish supplies expended during patient treatment.

(l) Where EMT or EMT-I defibrillation services are approved, the Medical Director or service Medical Director approved by the Department shall:

(i) Conduct or have his designee conduct a periodic review and practical session for each D certified EMT or EMT-I for whom he provides medical control. This review shall be conducted monthly for D/Manual services and semi-annually for D/Automatic services. The review shall be in accordance with Department protocol. He shall suspend any D certified EMT or EMT-I from functioning for 30 days if the EMT-D fails to pass the required review. If the EMT fails three consecutive defibrillation practical reviews he shall be decertified by the Department. However, if because of illness or medical director-approved absence from service, the EMT is unable to be present for examination, he may be reinstated, after testing if no longer than six months have elapsed since his last successful examination.

(ii) Assure that cassette tape recordings are made on all Defibrillator runs in accordance with operational standards.

(iii) Review and critique 100% of all Defibrillator runs for each service.

(iv) Submit semi-annual reports regarding Defibrillator program activity to the Department on forms provided by the Department. The report may include as a minimum:

(A) Defibrillation run data;

(B) Verification of medical director review of each Defibrillation run;

(C) Verification of D certified EMT review and practice session;

(D) Notice of any change in individual D certified EMT status.

(2) Operational standards

(a) Persons certified as EMTs with IV certification or EMT-Is, while functioning under resource hospital medical control, may provide basic life support services plus the following advanced life support procedures:

(i) EMTs with IV certification - Administer intravenous and intraosseous solutions as listed in the "R426 Appendix", and draw blood specimens for analysis.

(ii) EMT-I - Administer IV infusion, airway intubation by esophageal obturator, and drugs limited to those described in the document "R426 Appendix." Cardiac drugs may be used only when:

(A) The patient is being monitored;

(B) An ECG strip has been successfully transmitted and received at the resource hospital or designated paramedic base station as provided in R426-1-3-9; and

(C) The EMT-I has received verbal direction from the resource hospital physician or other authorized medical personnel to administer the drug. Standing orders for the use of drugs are not allowed.

(b) Defibrillation - Persons certified as EMTs or EMT-Is

with D certification or paramedic certification while functioning under these standards shall:

(i) Utilize equipment specified for EMT-D and record all runs where cardiopulmonary resuscitation is performed. The recording shall commence upon arrival of the EMT-D at the patient's side and shall not be terminated until care of the patient is directly assumed by the hospital medical director, his representative, or at the scene just prior to transport by a certified EMT- Paramedic functioning with a licensed paramedic service.

(ii) Determine the presence of ventricular fibrillation and defibrillate according to the established Department protocol.

(3) Equipment and supplies - See "R426 Appendix" for required list of equipment and supplies.

(4) EMT-Advanced/Physician Relationship - An Advanced EMT where possible shall be under medical control of a physician representing a designated resource hospital. When Advanced EMT's arrive at the scene of an injury or illness, they should secure radio or telephonic contact with their resource hospital to establish medical control as quickly as possible. If radio or telephonic contact cannot be obtained, the Advanced EMT should so indicate on the EMS report form and should follow local written protocol. If there is a physician at the scene who wishes to assist or provide medical direction to the Advanced EMT, the Advanced EMT shall follow his instructions but only until communications are established with the physician at the resource hospital. Once communications are established with the resource hospital physician, the Advanced EMT shall take orders from him. If the physician at the scene wishes to continue directing Advanced EMT activities, the Advanced EMT shall place the at-scene physician in radio contact with the resource hospital physician. The resource hospital physician has the option of (1) allowing the physician at the scene to assume or continue medical control, (2) assuming Advanced EMT medical control, but allowing the physician at the scene to assist, or (3) assuming medical control with no participation by the on scene physician. In the event option 1 is followed, all orders given to Advanced EMT's by the at-scene physician shall be repeated over the radio or telephone by the resource hospital physician for evaluation and recording. If in the judgment of the resource hospital physician who is monitoring and evaluating the at-scene medical control, the care is inappropriate to the nature of the medical emergency, the resource hospital physician may reassume medical control of the at-scene Advanced EMT's.

(5) Paramedics on board non-paramedic ambulances - Certified EMT-Paramedics providing services for a licensed paramedic rescue service may, under medical control, continue those services during transport of the patient to a medical facility in a licensed EMT-Basic or EMT-Intermediate ambulance.

R426-1-8. Maximum Licensed Services Transportation Rates and Charges.

(1) Licensed services operating under R426-1 shall not charge more than the maximum rates described under R426-1-8(3) through (7). In addition, the net income of licensed services, including subsidies of any type, shall not exceed the greater of the net income limit set by R426-1-8(a) or (b).

(a) The net income limit shall be the greater of eight percent of gross revenue or 14 percent return on average assets.

(b) Licensed Services may change rates at their discretion after notifying the Department, provided that the rates do not exceed the maximums specified in R426-1-8.

(2) The initial regulated rates established in R426-1-8(3), R426-1-8(4), R426-1-8(5), R426-1-8(6) and R426-1-8(7) are effective July 1, 1998, and shall be adjusted annually on July 1 thereafter, based on an annual review of the most recent 12 month percentage change in price levels from the following sources: U.S. Bureau of Labor Statistics Occupational Employment and Wage Data, the National Consumer Pricing Index (CPI), the State of Utah Governor's Office of Planning and Budget economic report; the U.S. Bureau of Labor Statistics seasonally adjusted CPI for Urban Consumers transportation and medical care categories, and the U.S. Bureau of Labor Statistics seasonally adjusted CPI for Urban Wage Earners and Clerical Workers transportation and medical categories. The adjustment shall be made effective and published by order of the Department prior to June 1 of each year and become effective July 1, of each year. As of the beginning of fiscal year 2000, all licensed services will collect financial data as delineated by the department to be submitted as detailed under R426-1-8(10). This data shall then be used as the basis for the annual rate adjustment beginning July 1, 2001.

(3) Base Rates -

(a) Basic Life Support - $226.62 per transport.

(b) Advanced Life Support - Intermediate - $269.12 per transport.

(c) Advanced Life Support - Paramedic Ambulance Transfer Service inter-facility transports, and Paramedic Ambulance transports that provide basic life support - $339.94 per transport.

(d) Advanced Life Support - Paramedic ambulance transports that, under physician medical direction, provide basic or intermediate ambulance transports that have paramedics on-board to continue advanced life support initiated by a paramedic rescue service - Basic ambulance service - $407.92 per transport, Intermediate ambulance service - $450.42 per transport. Any ambulance service that interfaces with a paramedic rescue service must have an interlocal or equivalent agreement in place, dealing with reimbursing the paramedic agency for services provided up to the maximum of $141.64 per transport.

(4) Mileage Rate - $9.92 per mile or fraction thereof. In all cases mileage shall be computed from the point of pickup to the point of delivery.

(5) Surcharges -

(a) Emergency - A surcharge of $22.48 per transport may be assessed for emergency responses.

(b) Night - A surcharge of $22.48 per transport may be assessed for ambulance service between the hours of 8:00 p.m. and 8:00 a.m.

(c) Off-road - Where the ambulance is required to travel for ten miles or more on unpaved roads, a surcharge of $18.73 per transport may be assessed.

(6) Special Provisions -

(a) Multiple Patients - If more than one patient is transported from the same point of origin to the same point of

delivery in the same ambulance, the charges to be assessed to each individual will be determined as follows:

(i) Each patient will be assessed the transportation rate.

(ii) The emergency surcharge, night surcharge and mileage rate will be computed as specified, the sum to be divided equally between the total number of patients.

(b) Round trip - A round trip may be billed as two one-way trips.

(c) Waiting time - An ambulance shall provide 15 minutes of time at no charge at both point of pickup and point of delivery, and may charge $12.49 per quarter hour or fraction thereof thereafter. On round trips, 30 minutes at no charge will be allowed from the time the ambulance reaches the point of delivery until starting the return trip. At the expiration of the 30 minutes, the ambulance service may charge $12.49 per quarter hour or fraction thereof thereafter.

(7) Non-transport rate - Where an ambulance is summoned to a medical emergency by a dispatch agency, but does not transport, a charge of $187.38 may be assessed.

(8) Charges for supplies - Supplies shall be priced fairly and competitively with similar products in the local area.

(9) Uncontrollable Cost Escalation -

(a) In the event of a temporary escalation of costs, an ambulance service may petition the EMS Committee for permission to make a temporary service-specific surcharge. The petition shall specify the amount of the proposed surcharge, the reason for the surcharge, and provide sufficient financial data to clearly demonstrate the need for the proposed surcharge. Since this is intended to only provide temporary relief, the petition shall also include a recommended time limit.

(b) The petition shall be submitted to the Department, which shall within 30 days, notify the ambulance service of the date and time of the next EMS Committee meeting and the disposition of the petition. Prior to the EMS Committee meeting, the Department shall evaluate the petition for reasonableness and prepare a written response for consideration by the EMS Committee. The EMS Committee may reject, modify or adopt the proposed surcharge as a proposed rule and direct the Department to submit a notice of rule change to the Division of Administrative Rules in accordance with the Rulemaking Act. The public comment period shall include a public hearing.

(10) Licensed Service reporting requirements - The licensed service shall file with the Department within five months of the end of each licensed service's fiscal year, an operating report in accordance with the instructions, guidelines and review criteria specified in the EMS Committee's "Department of Health Uniform Licensed Service Fiscal Reporting Guide". The Department shall provide a summary of operating reports received during the previous state fiscal year to the EMS Committee in the October quarterly meeting, beginning 2001.

(11) Fiscal audits -

(a) Upon receipt of licensed service fiscal reports, the Department shall review them for compliance to standards established in the "Department of Health Uniform Licensed Service Fiscal Reporting Guide." The Department, or its representative, may audit licensed services to verify the information given in the report.

(b) Where the Department determines that the audited service is not in compliance with this rule, the Department shall proceed in accordance with Section 26-8-12.

R426-1-9. Inspections.

(1) The Department shall make all investigations and inspections necessary for the enforcement of R426-1.

(2) Inspections, other than the initial inspection, shall be made on an annual basis or as may be required and may include all personnel, ambulances, facilities, communications equipment, methods, procedures, materials, and all other attributes or characteristics. Findings shall be recorded on an inspection report form provided for this purpose. The licensee or its representative shall sign the inspection form acknowledging the inspection, however, signature shall not necessarily indicate agreement with the findings thereof. A copy of the inspection report shall be furnished to the licensee.

(3) Based upon compliance of the ambulance service an ambulance service license and ambulance vehicle permit will be issued. In conjunction with ambulance vehicle permits, decals shall be issued for specific ambulances which shall not be transferrable to other ambulances.

R426-1-10. Exemptions from the Provisions of this Rule.

See Section 26-8-10.

R426-1-11. Denial, Suspension or Revocation of a License, Permit or Certificate.

See Section 26-8-12.

R426-1-12. Research or Study Projects.

(1) Persons proposing to undertake a research or study project which requires waiver of any rules herein, shall have a project director who is a physician licensed to practice medicine in the state of Utah, and shall submit a written proposal to the Bureau of Emergency Medical Services for presentation to the EMS Committee. The Committee may only waive rules if the waiver is not inconsistent with statutory requirements. The proposal shall include the following:

(a) A project description, including:

(i) Need for project;

(ii) Project goal;

(iii) Specific objectives;

(iv) Methodology for project implementation;

(v) Geographical area to be covered by the proposed project;

(vi) Specific regulation to be waived;

(vii) Proposed waiver language;

(viii) Evaluation methodology.

(b) A list of the pre-hospital providers and hospitals participating in the project.

(c) A signed statement of endorsement from participating hospital medical directors and administrators, the director of each participating paramedic/ambulance provider, other project participants, and other parties who may be significantly affected.

(d) A description of the skills to be utilized by the Paramedics/EMT's, if different from those specified in these regulations, and provision for training and supervising of personnel who are to utilize these skills, including the names of

personnel.

(e) The name and signature of the project director attesting to his support and approval of the project proposal.

(2) Study project approval

(a) The EMS Committee may grant approval to any project found to comply with the conditions specified in this section. Interested and affected parties will be notified of any proposed project and be provided an opportunity to comment. Only one project on any given subject shall be conducted within the state at any given time.

(b) A representative of the State Epidemiological Office or another person with statistical expertise, approved by the Director of the Bureau of Emergency Medical Services, shall review project design and make recommendations regarding technical detail, elimination of bias, study monitoring, hypothesis development in testing, and statistical validity.

(c) When considering any project, the EMS Committee may, at its discretion, require additional conditions to be met.

(d) Project approval shall be granted for a period of one year from the date of approval by the EMS Committee. Approval for continuation beyond this period by the EMS Committee shall be based on the achievement and satisfactory progress as evidenced in written progress reports to be submitted to the Bureau of Emergency Medical Services at least 90 days prior to the end of the approved year. The time periods for the project may not exceed three years.

(e) Approval of a project by the EMS Committee shall constitute approval of the personnel listed in the proposal to exercise the specified skills of the participants in the project. The Project Director shall submit the names of additional project personnel not initially approved, to the Bureau of Emergency Medical Services for consideration by the EMS Committee.

(f) The EMS Committee may rescind approval for the project at any time for just cause. Before any rescission is final, the agency involved in the study will be allowed a hearing by the EMS Committee to explain and express their views.

(3) Study recommendations - At least six months prior to the planned completion of the project, the medical director shall submit to the Bureau of Emergency Medical Services, a report with the preliminary findings of the project and any recommendations for changes in the project requirements.

R426-1-13. Training Equipment Rental Fees.

Department-owned training equipment is available upon request to assist training personnel in conducting initial training and continuing medical education programs. Rental fees are as follows:

TABLE

a. Complete set per course (Minimum charge)	$300.00
Additional charge per student over 20	12.50
b. Training equipment cost per piece per day	
Sphygmomanometer	4.00
Stethoscopes (Regular)	2.50
Dual Stethoscope (Trainers)	2.50
Cervical Collars	
Foam	1.50
Philadelphia	1.50
Cardio Pulsar	2.00
Oxygen Powered Demand Valve	20.50
Oxygen Powered Suction Unit	11.00
Bag Mask Resuscitators	10.50
Spray Bottles	.50
Construction Knives	1.50
Airway Kits	2.50
Oxygen Flowmeter Kit	11.00
Oxygen Cylinders	10.00
Orthopedic Backboard (Scoop)	4.00
Short Backboard (Metal)	4.00
Short Backboard (Wood)	3.00
Long Backboard (Wood)	3.50
Folding Backboard (Metal)	3.50
K.E.D. Splint	3.00
Long Board Leg Splints	1.00
Thomas Half Rings	3.00
Femur Traction Splint with Ratchet	9.00
Femur Traction Splint without Ratchet	7.50
Army Stretchers	2.00
Henrie Knee-Trac	.50
All Level Ambulance Cot	12.50
Backboard Straps and Neck roll	7.00
Blankets	6.00
Pillows and Pillow Cases	1.50
MAST Trousers	7.50
Skeleton	10.50
Resusci Anne II 15-00-05	17.50
Resusci Baby	6.00
Recording Resusci Anne	24.00
Obstetrical Mannequin	37.50
35 MM Slide Projector Kit	24.50
35 MM Slide Sets (Complete Set)	24.50
35 MM Slide Trays	.50
16 MM Motion Picture Projector	17.50
16 MM Films	12.00
Extrication Kits	30.00
Air Chisel Rescue Tool Kit	30.00
Compressed Air Cylinder	10.50
K-Bar Rescue Tool	6.00
Moulage Kit	20.50
Durawax	1.00
Intubation Mannequin (Adult and Infant)	8.00
Laryngoscopes	5.00
ET Tubes	4.00
Esophageal Obturator Airway Kits	15.00
Cardiac Monitor and Defibrillator	52.00
Heart Simulator	22.50
Portable Suction Unit	10.00
Infusion Trainer	6.00
Anatomical Model	24.50
Video Tapes	4.50
Bio-Com Rental	12.00
Cardboard Splints	.50
Phones, Sound Powered (two phones and wire) per set	1.50
Flip Card File	3.00
Mr. Hurt	30.00
Safety Goggles	1.50
O.B. Kit	8.50
Life Pack 5	52.00

R426-1-14. Penalty for Violation of Rule.

Any person who violates any provision of this rule may be assessed a penalty not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.

KEY: emergency medical services
January 7, 1999 26-8
Notice of Continuation December 9, 1997

R426. Health, Health Systems Improvement, Emergency Medical Services.
R426-2. Air Medical Service Rules.
R426-2-1. Authority and Purpose.

(1) This Rule is established under Chapter 8, Title 26.

(2) The purpose of this Rule is to set forth air ambulance policies and rules and standards adopted by the Utah Emergency Medical Services Committee which promote and protect the health and safety of the people of this state.

R426-2-2. Definitions.

As used in Rule R426-2:

(1) Advanced Life Support means an advanced level of pre-hospital and inter-hospital emergency care that includes basic life support functions plus some or all of the following techniques or procedures: cardiac monitoring, cardiac defibrillation, electrocardiography, administration of specific medications, drugs, and solutions, use of adjunctive medical devices, trauma care, and other techniques and procedures authorized by the committee.

(2) Air medical personnel means the pilot and patient care personnel who are involved in an air medical transport.

(3) Air Medical Service means any publicly or privately owned organization that is licensed or applies for licensure under R426-2.

(4) Air Ambulance means any privately or publicly owned air vehicle specifically designed, constructed, or modified, which is intended to be used for and is maintained or equipped with the intent to be used for, maintained or operated for the transportation of individuals who are sick, injured, or otherwise incapacitated or helpless.

(5) Air Medical Service Medical Director means a physician knowledgeable of potential medical complications which may arise because of air medical transport, and is responsible for overseeing and assuring that the appropriate air ambulance, medical personnel, and equipment are provided for patients transported by the air ambulance service.

(6) Air Medical Transport Service means the transportation and care of patients by air ambulance.

(7) CAMTS is the acronym for the Commission on Accreditation of Medical Transport Systems, which is a non-profit organization dedicated to improving the quality of air medical services.

(8) Committee means the State Emergency Medical Services Committee.

(9) Department means the Utah Department of Health.

(10) Director means the Director of the Utah Department of Health.

(11) License means the authorization issued by the Department to a person to provide emergency medical services.

(12) License Officer means the Director of the Department or the Director's designee.

(13) Medical Control means direction and advice provided by medical personnel at a designated medical facility to pre-hospital advanced life support personnel by radio or telephonic communications, written protocol, or direct verbal order.

(14) Patient means an individual who, as the result of illness or injury, needs immediate medical attention, whose physical or mental condition presents an imminent danger of loss of life or significant health impairment, or who may be otherwise incapacitated or helpless as a result of a physical or mental condition.

(15) Permit means the authorization issued by the Department in respect to an air ambulance used or to be used to provide air medical transport services.

(16) Person means any individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, agency, or organization of any kind, public or private.

(17) Physician means a medical doctor licensed to practice medicine in Utah.

(18) PA means a licensed Physician's Assistant.

(19) Pilot means any individual licensed under Federal Aviation Regulations, Part 135.

(20) Quality Management means a total process of continually monitoring, assessing, and improving the quality of the service.

(21) Quality Management Director means the person who is the quality management team leader.

(22) Resource Hospital means a facility designated by the EMS Committee which assumes medical leadership and medical control for the provision of advanced life support services in a specified geographical area.

(23) RN means a registered nurse.

(24) RT means a registered respiratory therapist.

(25) Specialized Life Support Air Medical Service means a level of care which requires equipment or speciality patient care by one or more medical personnel in addition to the regularly scheduled air medical team.

R426-2-3. Requirements for Licensure.

(1) The Department may issue licenses and vehicle permits to air medical services conforming to R426-2 for Advanced Life Support Air Medical Service and for Specialized Life Support Air Medical Service. A Specialized Life Support Air Medical Service license must list, on the license, the specialities for which the Specialized Life Support Air Medical Service is licensed.

(2) A person may not furnish, operate, conduct, maintain, advertise, or provide air medical transport services to patients within the state or from within the state to out of state more than once in a twelve month period unless licensed by the Department.

(3) An air medical service shall comply with all state and federal requirements governing the specific vehicles utilized for air medical transport services.

(4) An air medical service must provide air medical services 24 hours a day, every day of the year as allowed by weather conditions except when the service is committed to another medical emergency or is unavailable due to maintenance requirements.

(5) To become licensed as an air medical service, an applicant must submit to the Department an application and appropriate fees for an original license which shall include the following:

(a) Certified Articles of Incorporation, if incorporated.

(b) The name, address, and business type of the owner of the air medical service or proposed air medical service.

(c) The name and address of the air ambulance operator(s) providing air ambulance(s) to the service.

(d) The name under which the applicant is doing business or proposes to do business.

(e) A statement summarizing the training and experience of the applicant in the air transportation and care of patients.

(f) A description and location of each dedicated and back-up air ambulance(s) procured for use in the air medical service, including the make, model, year of manufacture, FAA-N number, insignia, name or monogram, or other distinguishing characteristics.

(g) A copy of current Federal Aviation Administration(FAA) Air Carrier Operating Certificate authorizing FAR, Part 135, operations.

(h) A copy of the current certificate of insurance for the air ambulance.

(i) A copy of the current certificate of insurance demonstrating coverage for medical malpractice.

(j) The geographical service area, location and description of the place or places from which the air ambulance will operate.

(k) Name of the training officer responsible for the air medical personnel continuing education.

(l) The name of the air medical service medical director.

(m) A proposed roster of medical personnel which includes level of certification or licensure.

(n) A statement detailing the level of care for which the air medical service wishes to be licensed, either advanced or specialized.

(6) Upon receipt of an appropriately completed application for an air medical service license and submission of license fees, the Department shall collect supporting documentation and review each application. The Air Ambulance Subcommittee shall review each application and make recommendations to the Department for licensure based upon type of service to be offered, equipment and trained personnel. Public need and necessity requirements of Subsection 26-8-7(2) are superseded by federal law. After review and recommendation by the Air Ambulance Subcommittee, and before issuing a license to a new air medical service, the Department shall directly inspect the vehicle(s), the air medical equipment, and required documentation.

(7) The Department shall issue an air medical service license and air ambulance permit for a period of four years from the date of issue and which shall remain valid for the period unless revoked or suspended by the Department. The department may conduct inspections to assure compliance.

(8) Upon change of ownership, an air medical service license and air ambulance permit terminates and the new owner or operator must file within ten business days of acquisition an application for renewal of the air medical service license and air ambulance permit.

(9) Air medical services must have an agreement to allow hospital emergency department physicians, nurses, and other personnel who participate in emergency medical services to fly on air ambulances.

(10) Air medical services must provide reports to the Department, for each mission made, on forms or a data format specified by the Department.

(11) Effective July 1, 1998, successful completion of the CAMTS certification process is required for licensure and relicensure by the Department as an air medical service.

(a) Air medical services licensed under R426-2 as of July 1, 1997 must achieve CAMTS certification as of July 1, 1998, and meet requirements of R426-2 for relicensure.

(b) Air medical services licensed under R426-2 after July 1, 1997 must submit an application for CAMTS certification within one year of receiving a license under this rule.

R426-2-4. Personnel Requirements.

(1) Emergency Medical Technicians and Paramedics, when responding to a medical emergency, shall display their certification patch or identification card on outer clothing to identify competency level at the scene.

(2) Air medical service providing basic life support must have at least one medical attendant who is an EMT-I, EMT-P, PA, RN, or MD.

(3) Air medical services providing advanced life support must have at least one medical attendant who is an EMT-P, PA, RN, or MD. This attendant shall be the primary medical attendant. The second medical attendant may be an EMT-P, PA, RT, RN, or MD.

(4) Air medical services providing specialized life support must have at least one medical attendant who is a RN or MD. This attendant shall be the primary medical attendant. The second medical attendant may be an EMT-P, PA, RT, RN, or MD.

(5) All Basic, Advanced, and Specialized Life Support Medical Attendants must:

(a) Have a current CPR card or certificate meeting standards approved by the Department.

(b) Have verification in the air medical service file of initial and annual training in altitude physiology, safety, stress management, infection control, hazardous materials, survival training, disaster training, triage, and Utah emergency medical system communications.

(c) Be knowledgeable in the application, operation, care, and removal of all medical equipment used in the care of the patient. The air medical personnel shall have a knowledge of potential in-flight complications, which may arise from the use of the medical equipment and it's in-flight capabilities and limitations.

(d) Have available during transport, a current copy of all written protocols authorized for use by the air medical service medical director. Patient care shall be governed by these authorized written protocols.

(6) Air medical services licensed for specialized life support shall meet the following requirements:

(a) Maintain clinical competency by keeping a current completion card in speciality education programs required by the air medical service job description(e.g., American Heart Association/American Academy of Pediatrics Neonatal Association or Pediatric Advanced Life Support pertinent to appropriate speciality).

(b) Attend continuing education for speciality care providers that is specific and appropriate to the mission statement and scope of care for air medical services.

(c) Annually demonstrate to the air medical service medical director a knowledge and competency of specialized care and

treatment of patients.

(7) All air medical services shall have an air medical service medical director who is a physician licensed in the state in which the ground base is located for the air ambulance, knowledgeable and responsible for the air medical care of patients.

(8) The air medical service applicant shall provide in writing to the Department the name of the air medical service medical director. If the air medical service medical director is replaced or removed, the air medical service shall notify the Department within thirty days after the action.

(a) The air medical service medical director:

(i) Shall have initial and annual training in altitude physiology, air ambulance safety, stress management, infection control, hazardous materials, survival training, disaster training, triage, and Utah emergency medical system communications. The air medical service shall document this training and make it available for inspection by the Department.

(ii) Shall have a current completion card in Advanced Cardiac Life Support according to the current standards of the American Heart Association.

(iii) Shall have a current completion card in Advanced Trauma Life Support according to the current standards of the American College of Surgeons.

(iv) Shall have a current speciality education completion card in Neonatal Resuscitation Program, Pediatric Advanced Life Support, and other similar courses or equivalent education in these areas.

(v) Shall have access to all specialty physicians as consultants.

(b) It is the responsibility of the air medical director to:

(i) Authorize written protocols for use by air medical attendants and review policies and procedures of the air medical service.

(ii) Develop and review treatment protocols, assess field performance, and critique at least 10% of the air medical service runs.

R426-2-5. Air Ambulance Vehicle Requirements.

(1) An air ambulance must have a permit from the Department to operate in Utah. Each air ambulance shall carry a decal showing the permit expiration date and permit number issued by the Department as evidence of compliance with R426-2. The permit holder shall meet all Federal Aviation Regulations specific to the operation of the air medical service.

(2) All air medical services shall notify the Department whenever the ground base location of a permitted vehicle is permanently changed.

(3) Air ambulances shall be maintained in good mechanical repair and sanitary condition on premises, properly equipped, maintained, and operated to provide quality service.

(4) Air ambulance requirements are as follows:

(a) The air ambulance must have sufficient space to accommodate at least one patient on a stretcher.

(b) The air ambulance must have sufficient space to accommodate at least two medical attendant seats.

(c) The patient stretcher shall be FAA-approved. It must be installed using the FAA 337 form or a "Supplemental Type Certificate." The stretcher shall be of sufficient length and width to support a patient in full supine position who is ranked as a 95th percentile American male that is 6 feet tall and weighing 212 pounds. The head of the stretcher shall be capable of being elevated at least 30 degrees.

(d) The air ambulance doors shall be large enough to allow a stretcher to be loaded without rotating it more than 30 degrees about the longitudinal roll axis, or 45 degrees about the lateral pitch axis.

(e) The stretcher shall be positioned so as to allow the medical attendants a clear view and access to any part of the patient's body that may require medical attention. Seat-belted medical attendants must have access to the patient's head and upper body.

(f) The patient, stretcher, attendants, seats, and equipment shall be so arranged as to not block the pilot, medical attendants, or patients from easily exiting the air ambulance.

(g) The air ambulance shall have FAA- approved two point safety belts and security restraints adequate to stabilize and secure any patient, patient stretcher, medical attendants, pilots, or other individuals.

(h) The air ambulance shall have a temperature and ventilation system for the patient treatment area.

(i) The patient area shall have overhead or dome lighting of at least 40-foot candle at the patient level, to allow adequate patient care. During night operations the pilot's cockpit shall be protected from light originating from the patient care area.

(j) The air ambulance shall have a self contained interior lighting system powered by a battery pack or portable light with a battery source.

(k) The pilots, flight controls, power levers, and radios shall be physically protected from any intended or accidental interference by patient, air medical personnel or equipment and supplies.

(l) The patient must be sufficiently isolated from the cockpit to minimize in-flight distractions and interference which would affect flight safety.

(m) The interior surfaces shall be of material easily cleaned , sanitized, and designed for patient safety. Protruding sharp edges and corners shall be padded.

(n) Patients whose medical problems may be adversely affected by changes in altitude may only be transported in a pressurized air ambulance.

(o) The air medical service shall provide all medical attendants with sound ear protectors sufficient to reduce excessive noise pollution arising from the air ambulance during flight.

(p) There shall be sufficient medical oxygen to assure adequate delivery of oxygen necessary to meet the patient medical needs and anticipated in-flight complications. The medical oxygen must:

(i) be installed according to FAA regulation;

(ii) have an oxygen flow rate determined by in-line pressure gauges mounted in the patient care area with each outlet clearly identified and within reach of a seat-belted medical attendant;

(iii) allow the oxygen flow to be stopped at or near the oxygen source from inside the air ambulance;

(iv) have gauges that easily identify the quantity of medical oxygen available;

(v) be capable of delivering fifteen liters/minute at fifty psi;

(vi) have a portable oxygen bottle available for use during patient transfer to and from the air ambulance;

(vii) have a fixed back-up source of medical oxygen in the event of an oxygen system failure;

(viii) the oxygen flow meters shall be recessed, padded, or by other means mounted to prevent injury to patients or medical attendants; and

(ix) "No smoking" signs shall be prominently displayed inside the air ambulance.

(q) The air ambulance electric power must be provided through a power source capable to operate the medical equipment and a back-up source of electric power capable of operating all electrically powered medical equipment for one hour.

(r) The air ambulance must have at least two positive locking devices for intravenous containers padded, recessed, or mounted to prevent injury to air ambulance occupants. The containers shall be within reach of a seat-belted medical attendant.

(s) The air ambulance must be fitted with a metal hard lock container, fastened by hard point restraints to the air ambulance, or must have a locking cargo bay for all controlled substances left in an unattended

(t) An air ambulance shall have properly maintained survival gear appropriate to the service area and number of occupants.

(u) An air ambulance shall have an equipment configuration that is installed according to FAA criteria and in such a way that the air medical personnel can provide patient care.

(v) The air ambulance shall be configured in such a way that the air medical personnel have access to the patient in order to begin and maintain basic and advanced life support care.

(w) The air ambulance shall have space necessary to allow patient airway maintenance and to provide adequate ventilatory support from the secured, seat-belted position of the medical personnel.

R426-2-6. Equipment Standards.

(1) Air ambulances must maintain minimum quantities of supplies and equipment for each air medical transport as listed in the document R426 Appendix in accordance with the air medical service's licensure level. Due to weight and safety concerns on specialized air transports, the air medical service medical director shall insure that the appropriate equipment is carried according to the needs of the patient to be transported. All medications shall be stored according to manufacturer recommendations.

(2) All medical equipment except disposable items, shall be designed, constructed, and made of materials that under normal conditions and operations, are durable and capable of withstanding repeated cleaning.

(3) The equipment and medical supplies shall be maintained in working condition and within legal specifications.

(4) All non-disposable equipment shall be cleaned or sanitized after each air medical transport.

(5) Medical equipment shall be stored and readily accessible by air medical personnel.

(6) Before departing, the air medical personnel shall notify the pilot of any add-on equipment for weight and balance considerations.

(7) Physical or chemical restraints must be available and used for combative patients who could possibly hurt themselves or any other person in the air ambulance.

R426-2-7. Operational Standards.

(1) The pilot may refuse transport to any individual who the pilot considers to be a safety hazard to the air ambulance or any of its passengers.

(2) Records made for each trip on forms or data format specified by the Department, and a copy shall remain at the receiving facility for continuity of care.

(3) The air medical service must maintain a personnel file for personnel which shall include their qualifications and training.

(4) All air medical services must have an operational manual or policy and procedures manual available for all air medical personnel.

(5) All air medical service records shall be available for inspection by representatives of the Department.

(6)(a) All air ambulances shall be equipped to allow air medical service personnel to be able to:

(i) Communicate with hospital emergency medical departments, flight operations centers, air traffic control, emergency medical services, and law enforcement agencies.

(ii) Communicate with other air ambulances while in flight.

(b) The pilot must be able to override any radio or telephonic transmission in the event of an emergency.

8.1 The air ambulance shall be maintained in a clean condition with interior being thoroughly cleaned after each use as appropriate.

(7) The management of the air medical service shall be familiar with the federal regulations related to air medical services.

(8) Each air medical service must have a safety committee, with a designated safety officer. The committee shall meet at least quarterly to review safety issues and submit a written report to the air medical service management and maintain a copy on file at the air medical service office.

(9) All air medical service shall have a quality management team and a program implemented by this team to assess and improve the quality and appropriateness of patient care provided by the air medical service.

R426-2-8. Statutory penalties.

A person who violates this rule is subject to the provisions of Title 26, Chapter 23, which provides for a penalty of up to $5,000 per violation or a class B misdemeanor on the first offense and a class A misdemeanor on a subsequent offense.

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R426. Health, Health Systems Improvement, Emergency Medical Services.

R426-3. Paramedic Rules.

R426-3-1. Authority and Purpose.

(1) This rule is established under Section 26-8-4.

(2) The purposes of rule R426-3 are to set forth the policies adopted by the Utah Emergency Medical Services (EMS) Committee for:

(a) Licensing of agencies providing paramedic services.

(b) Establishing guidelines for training of paramedic personnel.

(c) Certifying and recertifying of paramedic personnel.

(d) Establishing paramedic vehicle supply and equipment standards.

(e) Setting rates and charges for paramedic services.

(f) Other related rules pertaining to the administration of the Utah Mobile Paramedic system.

R426-3-2. Definitions.

As used in rule R426-3:

(1) Agency means any department, division, board, council, committee, authority or agency of the State of Utah, or any of its political subdivisions.

(2) Associate Hospital means a hospital which provides 24-hour emergency care and has communication equipment approved by the Department which enables communication with EMT-Paramedics at a remote location through linkage with a base station hospital.

(3) Base Station Hospital means a hospital which provides 24-hour emergency care and has communication equipment approved by the Department which enables communication by radio and telephone with paramedics at a remote location.

(4) Department means the Utah Department of Health.

(5) EMS Committee means the Utah Emergency Medical Services Committee.

(6) EMT-Paramedic means an emergency medical technician who has completed an advanced life support training program approved by the Department who is certified by the Department as qualified to render services enumerated in R426-3.

(7) License Officer means the Director of the Department or his designee.

(8) Patient means an individual who, as the result of illness or injury, needs immediate medical attention, whose physical or mental condition presents an imminent danger of loss of life or significant health impairment, or who may be otherwise incapacitated or helpless as a result of a physical or mental condition.

(9) Person means any individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, agency, or organization of any kind, public or private.

(10) Physician means a medical doctor licensed to practice medicine and surgery in Utah.

(11) Receiving Center means any hospital which provides emergency care.

(12) Registered Nurse means a registered nurse licensed in Utah.

R426-3-3. Administration of the Paramedic Rules.

(1) The EMS Committee is responsible to establish rules as enumerated in the Utah Emergency Medical Services Systems Act, Section 26-8-4. Pursuant to the Act (Subsection 26-8-3-(3)) and to more effectively regulate the paramedic program, a Paramedic Advisory Subcommittee is established as a standing subcommittee advisory to the EMS Committee.

(2) The Department is responsible for licensing paramedic services, issuing ambulance and emergency response vehicle permits, developing, conducting, or authorizing training programs, testing and certifying EMT-Paramedics and administering rules herein adopted by the EMS Committee.

(a) The Department shall license paramedic services for a period of four years from the date of issue. The license is valid for the period unless revoked or suspended by the Department. The Department will conduct annual inspections to assure compliance. The Department may adjust the four year licensure period to adjust to revised recertification schedules.

(i) An application for a license shall be made to the appropriate Department representative on forms provided by the Department and shall contain at least the following information:

(A) written support from all related agencies;

(B) financial statement (agencies are exempted);

(C) copy of the Articles of Incorporation, if incorporated;

(D) the name and address of the owner of the paramedic service or proposed paramedic service;

(E) the name under which the applicant is doing business or proposes to do business;

(F) the training and experience of the applicant in the transportation and care of patients;

(G) the location and description of the place or places from which the paramedic service is intended to operate;

(H) the proposed geographic service area;

(I) agreement to provide reports to the Department, for each trip made, on forms specified by the Department; and

(J) agreement to make available, time for recertification programs available by hospitals, division, district, or develop their own as necessary.

(ii) Upon receipt of an appropriately completed application form for a paramedic service license, the license officer shall comply with the requirements in Chapter 8, Title 26. The Paramedic Advisory Committee shall review each application and make recommendations to the EMS Committee for licensure based upon type of paramedic service to be offered, equipment, trained personnel, and whether the public convenience and necessity requires the proposed paramedic service. Upon approval by the EMS Committee, and before issuing a license to a new paramedic service, the license officer shall cause the paramedic vehicle and equipment to be inspected. The paramedic personnel training qualifications designated in each application hereunder will be reviewed to determine compliance with R426-3.

(iii) The applicant for a paramedic service provider license will assure the Department that it complies with the following standards:

(A) Utilize one of the following response configurations which shall be so designated on the license.

(I) Paramedic Rescue - Rescue units to be used for response only, utilizing a licensed ambulance service for

transport.

(II) Paramedic Tactical Rescue - A rescue unit trained in combat medical response whose primary mission is the retrieval and field treatment of injured peace officers or victims of traumatic confrontations. In addition to the information required under R426-3-3(2)(a) for licensure as a Paramedic Tactical Rescue Unit (PTRU), the applicant shall provide to the Department its standard operating procedures and a letter of recommendation by the Commissioner of the Utah Department of Public Safety. Upon licensure, a PTRU shall function within another EMS service licensure area at the invitation of the local or state public safety authority. The PTRU shall then notify the local EMS agency to establish medical protocol. The PTRU shall also immediately notify the Department of its activation and circumstances of deployment, including location, situation, possible duration, and special needs.

(III) Paramedic Ambulance - Ambulances to be used routinely to transport patients. These units shall also comply with the requirements of the Ambulance Rules of the Utah Emergency Medical Services Act.

(IV) Paramedic Ambulance Transfer Service - Paramedic ambulance services may be licensed for "Paramedic Transfer Service" only. The service is restricted to movement of patients, upon physician request, between medical or nursing facilities. This service is not intended to be a first response paramedic service.

(B) Staffing Requirements

(I) Paramedic configuration at the scene of an accident or medical emergency should be no less than two persons, each of whom is an EMT-Paramedic, licensed medical doctor or registered nurse under Title 58.

(II) Under extraordinary circumstances, as defined by the EMS Committee, a paramedic vehicle may be manned by one EMT-Paramedic and one EMT. The licensee shall maintain a log of all events and submit them to the Department thirty days prior to the quarterly EMS Committee meeting for Committee review. The log shall show each date of variance, vehicle identification number, variance time period and justification.

(III) When a paramedic ambulance has been requested by the referring or attending physician for non-first response inter-facility movement of a patient, and the physician describes the condition of the patient as "serious or potentially critical," paramedic ambulance minimum staffing shall be as noted under R426-3-3(2)(a)(iii)(B)(I). Where the physician describes the condition of the patient as "critical," minimum paramedic ambulance staffing shall be as noted under R426-3-3(2)(a)(iii)(B)(I), plus a driver who is the holder of a valid driver's license.

(IV) The Department shall not authorize the expansion of an existing paramedic service until the provider can show adequate manning levels to meet the required standard of two paramedics at the scene of each accident or medical emergency.

(C) Availability - Provide 24-hour coverage in the defined geographic service area. Paramedic transfer services shall provide 24-hour on-call coverage.

(D) Response Area - The closest vehicle will be dispatched regardless of geopolitical boundaries between contiguous paramedic services.

(iv) Equipment, Supplies and Medications - Each paramedic unit shall carry medical equipment, supplies, medications, access and extrication equipment, and a standard tool box as described in the "R426 Appendix" hereby incorporated by reference into R426-3. This document may be modified at the discretion of the Department as other needs or new methodology becomes known. Copies may be obtained from the Department.

(A) Tool Box - Paramedic services licensed only to provide paramedic ambulance transfer services are exempt from these requirements.

(B) Access and Extrication Equipment - The equipment specified may either be carried on board the paramedic vehicle or on a second vehicle that routinely accompanies the paramedic vehicle to the scene of an accident. Paramedic services licensed only to provide paramedic ambulance transfer services are exempt from these requirements.

(C) Medications - Due to the nature of the difficulties involved in delivering emergency medical care in the field, it will be the responsibility of the local physician advisor to direct the standardization of the optimal package form of medications and the equipment designed for the administration of medications. These package forms will be made available for the resupplying of the paramedic units. All medications shall be stored per manufacturers' recommendations for temperature control and packaging requirements. A record shall be maintained which records the minimum and maximum temperatures inside each drug box during each 24-hour period. Any medications known or suspected to have been subjected to temperature outside the recommended range shall be returned to the hospital for replacement.

(v) The Department may conduct periodic inspections to determine that operational procedures, equipment condition and maintenance, drug and medication supplies and inventories are adequate and appropriate to the goals of the paramedic program. In this regard, Department representatives shall take the appropriate action to see that operational procedures, equipment condition and maintenance, drug and medication supplies and inventories found to be inadequate or inappropriate by any party are corrected, remedied, standardized or amended. Any licensed paramedic service shall allow emergency department physicians, nurses and other persons selected by the Department and participating in emergency medical services to ride with paramedic units for the purposes of:

(A) Evaluation of EMT-Paramedic performance.

(B) Identification of training needs.

(C) Improving communications between manpower resources.

(D) Clarification of role assignments as related to hospital emergency departments, communications, transportation and other components of the paramedic system.

(E) Training new paramedic personnel.

(F) Other purposes deemed necessary by the provider, District EMS Director or the Department.

(vi) All licensed providers shall send a copy of the official accident report to the Department whenever a permitted vehicle is involved in an accident while responding to or transporting a patient.

(b) The Department shall recommend for designation by the EMS Committee participating base station hospitals and

associate hospitals who shall comply with the following:

(i) Maintain a 24-hour emergency facility.

(ii) Assist the Department in collecting statistics and evaluating performance costs relating to the program. Each participating hospital shall use the standard Emergency Department Log or other forms as the Department requires.

(iii) Provide initial supplies of new medication when needed and replenish medical supplies and equipment expended during treatment of patients by mobile units.

(iv) Not transfer to another facility any patient who has been treated by a mobile intensive care paramedic unless or until, in the judgment of a licensed physician or registered nurse, the patient is medically able to be transferred and the transfer is in the best medical interest of the patient.

(v) Abide by the Utah Mobile Paramedic Rules established by the EMS Committee.

(vi) Provide to the Department a list of Hospital Paramedic Committee members. The committee should be composed of at least a licensed physician, designated as Medical Director for paramedic-hospital activities, a registered nurse, a representative of hospital administration and a certified paramedic. The committee shall meet monthly to assess paramedic field performance and evaluate continuing education needs. Each base and associate hospital shall submit a quarterly report of meetings outlining findings, recommendations, follow-up results and the names of paramedics involved in tape critique sessions.

(vii) All paramedic services shall be equipped to allow paramedic personnel to be able to:

(A) communicate with hospital emergency departments, dispatch centers, emergency medical services, and law enforcement agencies; and

(B) communicate on radio frequencies approved by the Department.

(viii) Have a licensed physician or registered nurse, qualified in CPR and ECG interpretation who is supervised by a licensed physician acting in accordance with the provisions of the Utah Nurse Practice Act, immediately available at all times to communicate with the EMT-Paramedics in the field.

(ix) Provide supervised clinical training for initial EMT-Paramedic training and for the continuing education of certified EMT-Paramedics.

(c) The Department shall approve local plans for paramedic system operation.

(i) Local emergency medical services councils will develop for Department approval, detailed plans for the operation of the paramedic systems within their district. Councils may request assistance from the Department in the development of paramedic system plans. Plans shall be in conformity with the Utah Mobile Paramedic Rules and shall include procedures and protocol as follows:

(A) Communications including public access, paramedic dispatch, and training;

(B) Patient triage;

(C) Patient or guardian refusal of services;

(D) EMT-Paramedic standing orders;

(E) Patient or guardian facility preference;

(F) Patient transfer;

(G) Medical records transfer and accessibility; and

(H) In-service training.

(ii) The plan will include letters of support from local government officials, hospital administration and paramedic providers to assure operational integrity of the paramedic system.

(iii) Plans will include procedures for conducting in-service education programs and the responsible people to contact for the program.

(iv) Plans for new paramedic services shall be submitted to the Department prior to the system start-up.

(v) Paramedic system plans will be reviewed by the Department and returned to the District EMS Director within 30 days of submittal.

R426-3-4. Training and Certification.

(1) EMT-Paramedic certification will be awarded by the Department for a four year period upon successful completion of a training program which shall consist of a minimum of 1,000 hours training as determined by the Department and a pass on the Department certification examination.

(2) At the discretion of the Department a trainee may be provisionally certified as a Paramedic for a period not to exceed 90 days. The employing agency is responsible to insure the proficiency of its EMT-Paramedics. It is their obligation to the patients they serve to make certain that any EMT-Paramedic whose job takes him away from patient care for a prolonged time, be reintroduced to patient care in a proper manner which is safe for the patient. To be certified as a paramedic, an individual shall:

(a) Have 12 months of field experience as a certified EMT. However, the 12 month period may be reduced to six months with special authorization from the Department based upon a written request from the resource hospital medical director.

(b) Be currently certified as an EMT in Utah.

(c) Submit a completed application form to the department.

(d) Submit to a background investigation.

(3) Paramedic training programs authorized by the Department to provide initial EMT-Paramedic training or continuing medical education experiences shall provide the following:

(a) qualified teaching staff and resource facility.

(b) adequate clinical facilities to allow for a variety of learning experiences.

(c) qualified physicians, nurses and other health professionals to supervise trainees during initial training.

(d) Authorized hospitals shall provide a variety of supervised training experiences for trainees during initial training and for certified EMT- Paramedics as part of the continuing education program as defined in this rule. Patient care clinical areas shall include the following:

(i) emergency Department;

(ii) intensive care unit;

(iii) coronary care unit;

(iv) delivery room;

(v) operating room;

(vi) recovery room.

(e) Trainees may be accepted into programs under criteria established by the training institution, but shall as a minimum provide documentation of successful completion of an 120-hour

EMT training program or its equivalent.

(f) The training institution, or Department, shall have the authority to terminate training of any trainee during any phase of the program because of:

(i) failure to achieve minimum academic standards;

(ii) disclosure of fraudulent application;

(iii) failure of clinical or fieldwork training segments due to:

(A) technical incompetence due to emotional instability under stress; or

(B) technical incompetence as determined by supervisory personnel or instructional staff of the training institution, training hospital or paramedic service involved in field internship training. Reasons for termination by the training institution shall be reduced to written form and submitted to the Department prior to any action taken toward trainee.

(iv) Conviction of any felony, misdemeanor or act or moral turpitude, excluding minor traffic violations chargeable as infractions.

(4) Paramedic training programs must meet the requirements of the paramedic training program accreditation standards as established by the Department.

(5) The Department shall establish EMT-Paramedic testing standards in conjunction with the paramedic training institutions.

(6) The Department shall establish other criteria relevant to the training of EMT-Paramedics.

(7) Training Program Monitoring - The Department shall be responsible for monitoring local in-service educational programs for EMT-Paramedics.

(8) Physician Training Consultant - Each paramedic provider shall provide for a physician operationally involved to serve as training consultant. The training consultant shall be responsible for the provider's paramedic continuing education program in accordance with state in-service training requirements and shall develop and maintain competency skill levels including the following subject areas:

(a) triage;

(b) cardiopulmonary resuscitation;

(c) airway management including:

(i) endotracheal or esophageal intubation;

(ii) removal of foreign objects; and

(iii) suctioning

(d) administration of intravenous or intraosseous solutions and intravenous medications;

(e) drug administration;

(f) arrythmia recognition;

(g) splinting and bandaging;

(h) soft tissue injuries;

(i) extrication and movement of injured persons;

(j) bleeding wounds and shock;

(k) oxygen administration;

(l) emergency childbirth; and

(m) medical and environmental emergencies.

R426-3-5. Recertification.

(1) Paramedic recertification shall be for a period of four years. This period may be modified by the Department to standardize all expiration dates to June 30. Anyone who certifies after July 1, 1998, shall receive a four year certification. Anyone certified prior to that date, must continue to recertify as of the date on their identification badge and will be converted to the four year cycle upon recertification.

(2) An EMT-Paramedic who wishes to recertify shall:

(a) submit a completed recertification application form, including social security number.

(b) submit to a background investigation.

(c) maintain and submit verification of current department-approved current course completion in adult and pediatric advanced Cardiac Life Support.

(d) submit verification of annual completion of 25 hours per year of Department approved continuing education.

(e) submit a statement from the applicant's sponsoring agency confirming the applicant's results of a TB examination.

(f) submit an evaluation and recommendation from the sponsoring agency's physician advisor.

(g) successfully complete the Department written examination.

(3) At the discretion of the Department, an EMT-Paramedic may have his certification provisionally extended for a period not to exceed 90 days, for evaluation.

R426-3-6. EMT-Paramedic Functions.

(1) Upon satisfactory completion of the initial training program and upon Department certification, an EMT-Paramedic may carry out the following functions:

(a) Render advanced first aid, rescue and resuscitation services.

(b) Administer parenteral medications under the direct supervision of a licensed physician or a registered nurse both during training and after certification.

(c) Perform cardiopulmonary resuscitation and defibrillation in a pulseless, non-breathing patient.

(d) Where voice contact or a telemetered electrocardiogram is monitored by a licensed physician or a registered nurse supervised by a licensed physician, and direct communication is maintained, upon order of the physician or nurse, perform procedures and administer drugs approved by the EMS Committee as follows:

(i) administer intravenous or intraosseous solutions;

(ii) perform gastric suction by intubation;

(iii) administer airway intubation by esophageal tube or endotracheal tube;

(iv) perform needle aspiration of the chest;

(v) perform a phlebotomy or draw blood specimens for analysis;

(vi) administer drugs of the following classes:

(A) antiarrhythmic agents;

(B) vagolytic agents;

(C) chronotropic agents;

(D) ionotropic agents;

(E) analgesic agents;

(F) alkalinizing agents; and

(G) vasopressor agents.

(vii) provide medication by intracardiac puncture; and

(viii) perform cricothyroidotomy.

(e) Services noted in this section under written standing or contingency orders signed by the Base Station or Associate

Hospital Medical Director(s) and approved by the Paramedic Advisory Subcommittee.

(2) At the scene of an accident, in transit, or where a sudden illness occurs, certified Paramedics shall be responsible for the direction and provision of emergency medical care, as described in this section.

(3) The Department shall exclude from paramedic certification an individual who may pose an unacceptable risk to public health and safety, as indicated by his criminal history. The Department shall conduct a background check on each individual who seeks to certify or recertify as a paramedic.

(a) An individual convicted of certain crimes presents an unreasonable risk and the Department shall deny all applications for certification or recertification by individuals convicted of the following crimes:

(i) Sexual misconduct if the victim's failure to affirmatively consent is an element of the crime, such as forcible rape.

(ii) Sexual or physical abuse of children, the elderly or infirm, such as sexual misconduct with a child, making or distributing child pornography or using a child in a sexual display, incest involving a child, assault on an elderly or infirm person.

(iii) Abuse, neglect, theft from, or financial exploitation of a person entrusted to the care or protection of the applicant, if the victim is an out-of-hospital patient or a patient or resident of a health care facility.

(iv) Crimes of violence against persons, such as aggravated assault, murder or attempted murder, manslaughter except involuntary manslaughter, kidnaping, robbery of any degree; or arson; or attempts to commit such crimes.

(b) Except in extraordinary circumstances, established by clear and convincing evidence that certification or recertification will not jeopardize public health and safety, the Department shall deny applicants for certification or recertification in the following categories:

(i) Persons who are convicted of any crime not listed in (a) and who are currently incarcerated, on work release, on probation or on parole.

(ii) Conviction of crimes in the following categories, unless at least three years have passed since the conviction or at least three years have passed since release from custodial confinement, whichever occurs later:

(A) Crimes of violence against persons, such as assault;

(B) Crimes defined as domestic violence under Section 77-36-1;

(C) Crimes involving controlled substances or synthetics, or counterfeit drugs, including unlawful possession or distribution, or intent to distribute unlawfully, Schedule I through V drugs as defined by the Uniform Controlled Dangerous Substances Act; and

(D) Crimes against property, such as grand larceny, burglary, embezzlement or insurance fraud.

(c) The Department shall deny certification or recertification to individuals convicted of crimes, including DUIs, but not including minor traffic violations chargeable as infractions after consideration of the following factors:

(i) The seriousness of the crime.

(ii) Whether the crime relates directly to the skills of prehospital care service and the delivery of patient care.

(iii) Amount of time that has elapsed since the crime was committed.

(iv) Whether the crime involved violence to or abuse of another person.

(v) Whether the crime involved a minor or a person of diminished capacity as a victim.

(vi) Whether the applicant's actions and conduct since the crime occurred are consistent with the holding of a position of public trust.

(vii) Total number of arrests and convictions.

(viii) Whether the applicant was truthful regarding the crime on his/her application.

(d) Certified EMS personnel must notify the Department of any arrest or conviction. The Department may suspend, decertify, or place on probation anyone who does not notify the Department within 30 days of the arrest or conviction.

(e) The Department may decertify or suspend certification, or place a person on probation for any of the above violations.

(f) The Department may decertify or suspend certification, or place on probation an EMT-Paramedic who refuses to submit to a background check

(4) Refusal, Suspension or Revocation of Certification - The Department may refuse to issue a certification or recertification, or suspend or revoke a certification for any of the following causes:

(a) Habitual or excessive use or addiction to narcotics or dangerous drugs. Refusal to take a drug test administered by an EMS employer or the Department, is grounds for refusal, suspension or certification revocation by the Department of Health.

(b) Habitual abuse of alcoholic beverages or being under the influence of alcoholic beverages while on call or on duty as an EMT-Paramedic or while driving any emergency vehicle.

(c) Failure to comply with the EMT-Paramedic training certification or recertification requirements of this rule.

(d) Fraud or deceit in applying for or obtaining a certification or fraud, deceit, incompetence, patient abuse, theft, or dishonesty in the performance of duties and practice as an EMT-Paramedic.

(e) Involvement in the unauthorized use or removal of narcotics, drugs, supplies or equipment from any emergency vehicle or health care facility.

(f) Performing procedures or skills beyond the level of certification or violation of laws pertaining to medical practice and drugs.

(g) Mental incompetence as determined by a court of competent jurisdiction.

(h) Demonstrated inabilities and failure to perform adequate patient care.

(i) For good cause, including conduct which is unethical, immoral, or dishonorable.

(5) A Paramedic shall be under medical control of a physician representing a designated base station hospital. When Paramedics arrive at the scene of an injury or illness, they must secure radio or telephonic contact with a base station hospital Emergency Department to establish medical control as quickly as possible. If radio or telephonic contact cannot be obtained, Paramedics must so indicate on the Incident Trip Report form

and follow local written contingency orders of the base station hospital providing medical control. If there is a physician at the scene who wishes to assist or provide medical direction to the Paramedics, the Paramedics shall follow his instructions but only until communications are established with a physician at the base station hospital Emergency Department. Once communications are established with the base station hospital physician, the Paramedics must take orders from him. If the physician at the scene wishes to continue directing paramedic activities, the Paramedics may place the at-scene physician in radio or telephonic contact with the base station physician. The base station physician may (1) allow the physician at the scene to assume or continue medical control, (2) retain paramedic medical control, but allow the physician at the scene to assist, or (3) retain medical control with no participation by the on-scene physician. If Option (1) is followed, all orders given to the Paramedic by the at-scene physician, shall be repeated over the radio or telephone to the base station hospital physician for evaluation and documentation. If in the judgment of the base station hospital physician who is monitoring and evaluating the at-scene medical control, the care is inappropriate to the nature of the medical emergency, the base station hospital physician may reassume medical control of the at-scene EMT-Paramedics.

R426-3-7. Fees and Charges.

(1) The base station hospital, associate hospital and receiving center shall not bill or otherwise charge patients for mobile paramedic services provided to patients by EMT-Paramedics at the scene of an emergency, during transport to the hospital or other emergency facility and before admission to the hospital, unless they are the licensed provider of paramedic services. The hospital may recover the cost, through the patient billing process for supplies and drugs administered by the EMT-Paramedic to patients, if the supplies or drugs were subsequently replaced by the hospital as outlined in the Utah Mobile Paramedic rules.

(2) Paramedic Services operating under R426-3 may, at their discretion, make charges for paramedic services not to exceed the standards set in R426-1, Ambulance Rules.

R426-3-8. Denial, Suspension, or Revocation.

See Section 26-8-13.

R426-3-9. Research or Study Projects.

(1) Persons proposing to undertake a research or study project which requires waiver of any rule herein, shall have a project director who is a physician licensed to practice medicine in the state of Utah, and shall submit a written proposal to the Bureau of Emergency Medical Services for presentation to the EMS Committee. The Committee may only waive rules if the waiver is not inconsistent with statutory requirements. The proposal shall include the following:

(a) A project description, including:

(i) Need for project,

(ii) Project goal,

(iii) Specific objectives,

(iv) Methodology for the project implementation,

(v) Geographical area to be covered by the proposed project,

(vi) Specific rule to be waived,

(vii) Proposed waiver language, and

(viii) Evaluation methodology.

(b) A list of the pre-hospital providers and hospitals participating in the project.

(c) A signed statement of endorsement from participating hospital medical directors and administrators, the director of each participating paramedic/ambulance provider, other project participants, and other parties who may be significantly affected.

(d) A description of the skills to be utilized by the EMT-Paramedics, if different from those specified in R426-3, and provision for training and supervising of personnel who are to utilize these skills, including the names of the personnel.

(e) The name and signature of the project director attesting to his support and approval of the project proposal.

(2) Study project approval

(a) The EMS Committee may grant approval to any project found to comply with the conditions specified in this section. Interested and affected parties will be notified of any proposed project and be provided an opportunity to comment. Only one project on any given subject shall be conducted within the state at any given time.

(b) A representative of the State Epidemiological Office or another person with statistical expertise, approved by the Director of the Bureau of Emergency Medical Services, shall review project design and make recommendations regarding technical detail, elimination of bias, study monitoring, hypothesis development in testing, and statistical validity.

(c) When considering any project, the EMS Committee may, at its discretion, require additional conditions to be met.

(d) Project approval shall be granted for a period of one year from the date of approval by the EMS Committee. Approval for continuation beyond this period by the EMS Committee shall be based on the achievement and satisfactory progress as evidenced in written progress reports to be submitted to the Bureau of Emergency Medical Services at least 90 days prior to the end of the approved year. The time periods for the project shall not exceed three years.

(e) Approval of a project by the EMS Committee shall constitute approval of the personnel listed in the proposal to exercise the specified skills of the participants in the project. The Project Director shall submit the names of additional personnel not initially approved, to the Bureau of Emergency Medical Services for consideration by the EMS Committee.

(f) The EMS Committee may rescind approval for the project at any time for just cause. Before any rescission is final the agency involved in the study will be allowed a hearing by the EMS Committee to explain and express their views.

(3) Study recommendations - At least six months prior to the planned completion of the project, the medical director shall submit to the Bureau of Emergency Medical Services, a report with the preliminary findings of the project and any recommendations for changes in the project requirements.

R426-3-10. Penalty for Violation of Rule.

Any person who violates any provision of this rule may be assessed a penalty not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first

violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.

KEY: emergency medical services
January 22, 1999 26-8-1 et seq.
Notice of Continuation December 9, 1997

R426. Health, Health Systems Improvement, Emergency Medical Services.

R426-4. Emergency Medical Dispatcher Rules.

R426-4-1. Authority and Purpose.

(1) This rule is established under Section 26-8-4.

(2) The purposes of Rule R426-4 are to:

(a) Provide for the establishment of minimum standards to be met by those providing Medical Dispatch services in the State of Utah to promote the health and safety of the people of this state; and

(b) Establish training and certification standards for dispatchers who voluntarily request certification as Emergency Medical Dispatchers.

R426-4-2. Definitions.

As used in R426-4:

(1) Department means the Utah Department of Health.

(2) Emergency Medical Dispatcher (EMD) means a person certified by the Department who has successfully completed a Department approved Emergency Medical Dispatch Course.

(3) Local Medical Director means a person recognized by the Department who assumes medical leadership for the provision of basic or advanced life support services in the dispatch agency's geographical area.

(4) Person means any individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, agency, or organization of any kind.

(5) Selective Medical Dispatch System means a Department approved reference system used by a local dispatch agency to dispatch aid to medical emergencies which includes:

(a) Systemized caller interrogation questions;

(b) Systemized pre-arrival instructions; and

(c) Protocols matching the dispatcher's evaluation of injury or illness severity with vehicle response mode and configuration.

(6) Vehicle Response Mode means the use of emergency driving techniques, such as red-light-and-siren vs. routine driving response.

(7) Vehicle Response Configuration means the specific vehicle(s) of varied types, capabilities, and numbers responding to render assistance.

R426-4-3. Requisites for Providing Medical Dispatch Service.

(1) All agencies who routinely accept calls for EMS assistance from the public and dispatch emergency medical personnel shall have in effect a Selective Medical Dispatch System approved by the local medical directors.

(2) The Department shall assist local dispatch agencies in implementing a Selective Medical Dispatch System by providing technical assistance.

(3) Dispatch agencies shall provide for quality assurance by initiating an ongoing medical call review procedure.

R426-4-4. Personnel.

(1) Dispatchers serving medical providers are not required to be certified as Emergency Medical Dispatchers, but are encouraged to voluntarily seek training and certification through a Department approved course. Certification allows the dispatcher to fall under the liability immunity coverage provided in Subsection 26-8-11(2).

(2) The Department shall develop an Emergency Medical Dispatch training and certification program. Curriculum standards shall be established by the Department. To be initially certified as an EMD, an individual must:

(a) successfully complete a state approved EMD Course.

(b) submit to the department a completed application form, including social security number.

(c) submit to a background check.

(d) maintain and submit verification of a department-approved current course completion in cardiopulmonary resuscitation.

(e) successfully pass the Department's written examination.

(f) complete all requirements for certification within 90 days from course completion date. The Department may extend the time limit to individuals who demonstrate good cause based on extenuating circumstances.

(3) Recertification is required every four years to maintain state certification. Anyone who recertifies after July 1, 1998, shall receive a four year certification. Anyone certified prior to that date, must continue to recertify as of the date on their identification badge and will be converted to the four year cycle upon recertification. This period may be modified by the Department. An EMD who wishes to recertify shall:

(a) submit to the Department a completed application form including social security number;

(b) submit to a background check;

(c) maintain and submit verification of a department-approved current course completion in cardiopulmonary resuscitation;

(d) successfully complete the Department's EMD written examination; and

(e) complete 12 hours annually of Department-approved continuing medical dispatch education or in-service during the four year recertification period.

(4) The Department may grant reciprocity for applicants certified outside of Utah based on the following considerations:

(a) Applicants shall provide the Department with a current copy of their Emergency Medical Dispatcher certification.

(b) Applicants shall provide the Department proof that the certifying course meets the standards established by the Department.

(c) Applicants shall complete all certification requirements.

(5) This rule shall not preclude any physically handicapped individual from certifying or recertifying, who can demonstrate proficiency in verbally describing the treatment methods outlined in the Department approved EMD course to a caller.

(6) Those individuals who permit their certification to lapse may be recertified by completion of the recertification requirements.

(7) Instructors who teach emergency medical dispatchers shall meet certification standards established by the Department.

(8) The Department shall exclude from EMD certification an individual who may pose an unacceptable risk to public

health and safety, as indicated by his criminal history. The Department shall conduct a background check on each individual who seeks to certify or recertify as an EMD.

(a) An individual convicted of certain crimes presents an unreasonable risk and the Department shall deny all applications for certification or recertification by individuals convicted of the following crimes:

(i) Sexual misconduct if the victim's failure to affirmatively consent is an element of the crime, such as forcible rape.

(ii) Sexual or physical abuse of children, the elderly or infirm, such as sexual misconduct with a child, making or distributing child pornography or using a child in a sexual display, incest involving a child, assault on an elderly or infirm person.

(iii) Abuse, neglect, theft from, or financial exploitation of a person entrusted to the care or protection of the applicant, if the victim is an out-of-hospital patient or a patient or resident of a health care facility.

(iv) Crimes of violence against persons, such as aggravated assault, murder or attempted murder, manslaughter except involuntary manslaughter, kidnaping, robbery of any degree; or arson; or attempts to commit such crimes.

(b) Except in extraordinary circumstances, established by clear and convincing evidence that certification or recertification will not jeopardize public health and safety, the Department shall deny applicants for certification or recertification in the following categories:

(i) Persons who are convicted of any crime not listed in (a) and who are currently incarcerated, on work release, on probation or on parole.

(ii) Conviction of crimes in the following categories, unless at least three years have passed since the conviction or at least three years have passed since release from custodial confinement, whichever occurs later:

(A) Crimes of violence against persons, such as assault;

(B) Crimes defined as domestic violence under Section 77-36-1;

(C) Crimes involving controlled substances or synthetics, or counterfeit drugs, including unlawful possession or distribution, or intent to distribute unlawfully, Schedule I through V drugs as defined by the Uniform Controlled Dangerous Substances Act; and

(D) Crimes against property, such as grand larceny, burglary, embezzlement or insurance fraud.

(c) The Department shall deny certification or recertification to individuals convicted of crimes, including DUIs, but not including minor traffic violations chargeable as infractions after consideration of the following factors:

(i) The seriousness of the crime.

(ii) Whether the crime relates directly to the skills of prehospital care service and the delivery of patient care.

(iii) Amount of time that has elapsed since the crime was committed.

(iv) Whether the crime involved violence to or abuse of another person.

(v) Whether the crime involved a minor or a person of diminished capacity as a victim.

(vi) Whether the applicant's actions and conduct since the crime occurred are consistent with the holding of a position of public trust.

(vii) Total number of arrests and convictions.

(viii) Whether the applicant was truthful regarding the crime on his/her application.

(d) Certified EMS personnel must notify the Department of any arrest or conviction. The Department may suspend, decertify, or place on probation anyone who does not notify the Department within 30 days of the arrest or conviction.

(e) The Department may decertify or suspend certification, or place a person on probation for any of the above violations.

(f) The Department may require an EMD to submit to a background check upon Department request. The Department may decertify or suspend certification, or place on probation an EMD who refuses to submit to a background check.

(9) The Department may refuse to issue a certification or recertification, or suspend or revoke a certification for any of the following causes:

(a) Habitual or excessive use or addiction to narcotics or dangerous drugs. Refusal to take a drug test as administered by an EMS employer or the Department is grounds for refusal, suspension or certification revocation by the Department of Health.

(b) Habitual abuse of alcoholic beverages or being under the influence of alcoholic beverages while on call or on duty as an Emergency Medical Dispatcher or while driving any emergency vehicle.

(c) Failure to comply with the emergency medical dispatcher training certification or recertification requirements of this rule.

(d) Fraud or deceit in applying for or obtaining a certification or fraud, deceit, incompetence, patient abuse, theft, or dishonesty in the performance of duties and practice as an emergency medical dispatcher.

(e) Involvement in the unauthorized use or removal of narcotics, drugs, supplies or equipment from any emergency vehicle or health care facility.

(f) Performing procedures or skills beyond the level of certification or violation of laws pertaining to medical practice and drugs.

(g) Conviction of a felony, misdemeanor or a crime involving moral turpitude, but not including minor traffic violations chargeable as infractions.

(h) Mental incompetence as determined by a court of competent jurisdiction.

(i) Demonstrated inabilities and failure to perform adequate patient care.

(j) For good cause, including conduct which is unethical, immoral, or dishonorable.

R426-4-5. Penalty for Violation of Rule.

Any person who violates any provision of this rule may be assessed a penalty not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.

KEY: emergency medical services

January 22, 1999 **26-8**
Notice of Continuation December 2, 1997

R432. Health, Health Systems Improvement, Health Facility Licensure.
R432-1. General Health Care Facility Rules.
R432-1-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-1-2. Purpose.

The purpose of this rule is to define the standard terms for all licensed health care facilities and agencies.

R432-1-3. Definitions.

(1) Terms used in this rule are defined in Section 26-21-2. In addition:

(2) "AWOL/Elopement" means absence without leave; an unauthorized departure from the facility.

(3) "Abortion" is defined in Section 76-7-301(1).

(4) "Abuse" is defined in 62A-3-301 as:

(a) attempting to cause, or intentionally or knowingly causing physical harm, or intentionally placing another in fear of imminent physical harm;

(b) physical injury caused by criminally negligent acts or omissions;

(c) unlawful detention or unreasonable confinement;

(d) gross lewdness;

(e) deprivation of life sustaining treatment, except:

(i) as provided in Title 75, Chapter 2, Part 11, Personal Choice and Living Will Act; or

(ii) when informed consent, as defined in Section 76-5-111, has been obtained.

(5) "Act" means the Health Facility Licensure and Inspection Act, Title 26, Chapter 21.

(6) "Active Treatment" means the habilitative program of care for ICF/MR patients described in 42 CFR Part 483 (1983) that addresses training in daily living, self-help, and social skills; activities; recreation; appropriate staffing level; special resident programs; program evaluation; nursing services; documented resident surveys and progress; and social services.

(7) "Activities of Daily Living" ("ADL") means those personal functional activities required for an individual for continued well-being; including eating/nutrition, mobility, dressing, bathing, toileting, and behavior management. ADLs are divided into the following levels:

(a) "Independent" means the resident can perform the ADL without help.

(b) "Assistance" means the resident can perform some part of an activity, but cannot do it entirely alone.

(c) "Dependent" means the resident cannot perform any part of an activity; it must be done entirely by someone else.

(8) "Administering" means the direct application of a prescription drug or device, whether by injection, inhalation, ingestion, or by any other means, to the body of a human patient or research subject by another person.

(9) "Affiliation" means a relationship, usually signified by a written agreement, between two organizations, under the terms of which one organization agrees to provide specified services and personnel to meet the needs of the other, usually on a scheduled basis.

(10) "Aftercare" means post-institution services designed to help a patient maintain or improve on the gains made during inpatient treatment.

(11) "Aide or Attendant" means a person employed to assist in activities of daily living and in the direct personal care of patients.

(12) "ADAAG" means the Americans with Disability Act Accessibility Guidelines, 28 CFR 36, Appendix A, July 1993.

(13) "Ambulatory" means a person who is capable of achieving mobility sufficient to exit his residence without assistance of another person.

(14) "Annual Report" means a document containing annual statistical information from a licensed health facility or agency.

(15) "Assessment" means a process of observing, testing and evaluating a patient in order to obtain information.

(16) "Bathing Facility" means a bathtub or shower.

(17) "Bed Capacity" means the maximum number of beds which the facility is licensed to offer for patient care.

(18) "Behavior Management" means a planned, systematic application of methods and findings of behavioral science with the intent of reducing observable negative behaviors.

(19) "Birthing Room" means a room and environment designed, equipped and arranged to provide for the care of a woman and newborn and to accommodate her support person(s) during the process of vaginal birth.

(20) "Certificate of Completion" means a document issued by the Utah Board of Education to a person who completes an approved course of study not leading to a diploma; to a person who passes a challenge exam for that same course of study; or to a person whose out-of-state credentials and certificate are acceptable to the Board.

(21) "Certified" means a health facility or agency which holds a current license issued by the Department, and which also meets the standards established for participation in federally funded programs, such as Medicare.

(22) "Certified Registered Nurse Anesthetist" means a registered nurse who is licensed by the Utah Department of Commerce under Title 58 Chapter 31.

(23) "Certified Nurse Midwife" means an individual licensed to practice by the Utah Department of Commerce under Title 58, Chapter 44.

(24) "Certified Social Worker" means an individual licensed by the Utah Department Commerce under Title 58, Chapter 60.

(25) "Chronic Noncompliance" means three or more violations of a single licensing rule requirement which are documented in five inspections, including complaint investigations, surveys, or follow-up inspections on plans of correction, or any combination of them.

(26) "Clinical Note" means a dated, written notation by a member of the health team which indicates contact with a patient and describes any of the following: signs and symptoms of dysfunction, treatment given or medication administered, the patient's reaction, changes in physical or emotional condition, or services provided.

(27) "Clinical Staff" means the physicians and certified providers appointed by the governing authority to practice within the health facility or agency.

(28) "Consultant" means an individual who provides professional services either upon request or on the basis of a

prearranged schedule, usually on a contract basis, who is neither a member of the employed staff of the facility or agency, nor whose services are provided within the terms of an affiliation agreement.

(29) "Continuous Noncompliance" means three or more violations of a single licensing rule requirement occurring within a 12-month time period.

(30) "Contract Services" means services purchased by a health facility or agency under a contract with an individual or a provider whose personnel are not salaried employees of the facility or agency.

(31) "Control Station" means a central office or area for charting, drug preparation, and other patient-care tasks normally performed at a nursing station.

(32) "Critical Care Unit" means a special physical and functional unit for the segregation, concentration and close or continuous nursing observation and care of patients who are critically, seriously, or acutely ill.

(33) "Day Treatment" means training and habilitation services delivered outside the patient's place of residence which are intended to aid the vocational, pre-vocational, and self-sufficiency skill development of an ICF/MR patient. These services must meet active treatment requirements and must be coordinated and integrated with the active treatment program of the facility or agency.

(34) "Dentist" means a person registered and currently licensed by the Utah Department of Commerce under Title 58, Chapter 7.

(35) "Department" means the Utah Department of Health.

(36) "Developmental Disability" means a severe, chronic disability that meets all of the following conditions:

(a) Is attributable to: cerebral palsy, epilepsy, autism; or any other condition, other than mental illness, closely related to mental retardation which results in impairment of general intellectual functioning adaptive behavior, or requires treatment or services similar to those required for mentally retarded persons;

(b) Is manifested before the person reaches the age of 22;

(c) Is likely to continue indefinitely; and

(d) Results in substantial functional limitations in three or more of the following areas of major activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; or

(vi) capacity for independent living.

(37) "Dietitian" means a person who is certified pursuant to Title 58, Chapter 49.

(38) "Direct Services" means services provided by salaried employees of a health facility or agency, as opposed to services provided by contract.

(39) "Direct Supervision" means the critical observation and guidance by a qualified person of another person's activities or course of action.

(40) "Discharge" means the point at which the patient's involvement with a facility or agency program is terminated and the facility or agency program no longer maintains active responsibility for the care of the patient.

(41) "Distinct Part" means a discrete, physically definable entity located within a structure constructed and equipped according to applicable codes which:

(a) provides within the structure the necessary unique physical facilities, equipment, staff, and supplies to deliver all basic services that are offered to and needed for the diagnosis, therapy, and treatment of patients, and to comply with licensing standards;

(b) provides or arranges for necessary administrative and non-unique, non-clinical, ancillary type services such as dietary, laundry, housekeeping, business office and medical records; and

(c) protects the rights of patients including freedom from unwanted intrusion by visitors, guests, staff, and residents of adjacent licensed facilities and use occupancies.

(42) "Documentation" means written supportive information, records, or references to verify information required by law or rule.

(43) "Drug History" means identifying all of the drugs used by a patient, including prescribed and unprescribed drugs.

(44) "Emergency" means any situation or event that threatens or poses a threat to the occupants of the facility or agency, or prohibits one or more occupants (staff, patient, or visitor) from receiving services normally offered by the facility or agency, or requires action not normally performed by the facility or agency staff.

(45) "Emotional or psychological abuse" means deliberate conduct that is directed at a person through verbal or nonverbal means and that causes the individual to suffer emotional distress or to fear bodily injury, harm, or restraint.

(46) "Environment" means the physical and emotional atmosphere including architectural design, furnishings, color, privacy, and safety, as well as other people.

(47) "Executive Director" means the Executive Director of the Utah Department of Health.

(48) "Freestanding" means existing independently or physically separated from another health care facility by fire walls and doors and administrated by separate staff with separate records.

(49) "Free-standing Urgent Care Center," as distinguished from a private physician's office or emergency room setting, means a facility which provides out-patient health care service (on an as-needed basis, without appointment) to the public for diagnosis and treatment of medical conditions which do not require hospitalization or emergency intervention for a life-threatening or potentially permanently disabling condition. Diagnostic and therapeutic services provided by a free-standing urgent care center include: a medical history physical examination, assessment of health status and treatment for a variety of medical conditions commonly offered in a physician's office.

(50) "Governing Authority or Governing Body" means the board of trustees, owner, person or persons designated by the owner with ultimate authority and responsibility, both moral and legal, for the management, control, conduct and functioning of the health care facility or agency.

(51) "Governmental Unit" means the state, or any county, municipality, or other political subdivision of any department, division, board or other agency of any of the foregoing.

(52) "Guardian" means a person legally responsible for the

care and management of a person who is considered by law to be incompetent to manage his own affairs.

(53) "Habilitation" means techniques and treatment which actively build and develop new or alternative styles of independent functioning and promote new behavior which results in greater self-sufficiency and sense of well-being.

(54) "Health Care Facility or Agency" means any facility or agency licensed under the authority of the Health Facility Committee and designated as such in Subsection 26-21-2(10).

(55) "Health Services Supervisor" means a person with a professional medical license or certificate, such as a nurse, social worker, physical therapist, or psychologist, responsible for the development, supervision, and implementation of a written health care plan for each resident.

(56) "Home Health Aide" means a person who obtains a certificate of completion from the Department of Education which allows performance of higher-skilled health care and other related services under the supervision of a registered nurse from a home health agency, or performance of simple procedures as an extension of physical, speech, or occupational therapy under the supervision of licensed therapists.

(57) "Homemaker" means a person who cares for the environment in the home through performance of duties such as housekeeping, meal planning and preparation, laundry, shopping and errands.

(58) "Hospitalization" means an inpatient stay of at least 24 hours, or an overnight stay or emergency care, except a stay at a freestanding ambulatory surgical center that meets the requirements of R432-500.

(59) "ICD-9-CM" means the International Classification of Diseases, 9th revision, Clinical Modification, 1986.

(60) "Imminent Danger" means a situation or condition which presents a substantial likelihood of death or serious physical or mental harm to a patient or resident in the facility or agency.

(61) "Inpatient Program" means treatment provided in a suitably equipped setting that provides services to persons who require care that warrants 24-hour supervision.

(62) "Intake" means the administrative and assessment process for admission to a program.

(63) "Interdisciplinary Team" means a group of staff members composed of representatives from different professions, disciplines, or services.

(64) "Involuntary Medication" means medication which is prescribed by the physician but not taken willingly by the patient, and is administered due to compelling medical reasons.

(65) "Joint Commission" means the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

(66) "Lavatory" means a plumbing fixture designed and equipped for handwashing purposes.

(67) "License" means the certificate issued by the Department of Health for the operation of the facility or agency. This document constitutes the authority to receive patients and residents and to perform the services included within the scope of the rule and as specified on the license.

(68) "Licensed Practical Nurse (LPN)" means a person registered and licensed by the Utah Department of Commerce under Title 58, Chapter 31.

(69) "Licensed Practitioner" means a health professional whose license allows diagnosis, treatment, and prescribing practices within the scope of the license and established protocols.

(70) "Licensee" means the person or organization who is granted a license to operate a health facility or agency and who has ultimate authority and responsibility for the operation, management, control, conduct, and functioning of the facility or agency.

(71) "Licensing Agency" means the Bureau of Licensing of the Utah Department of Health.

(72) "Licensure" means the process of obtaining official or legal permission to operate a health facility or agency.

(73) "Living Unit" means the area or part of a facility where residents sleep and may include dining and other resident activity areas.

(74) "Low Risk Maternal Mother" means a woman who is in good general health throughout pregnancy and birth and who meets the criteria for low risk birth services as developed by the clinical staff and approved by the governing board and licensing agency for a Birthing Center.

(75) "Maladaptive (negative) Behavior" means behavior that is either self-injurious, or dangerous to others, or environmentally destructive, demonstrating a reduction in or lack of ability necessary to adjust to environmental demands.

(76) "Medical Equipment and Supplies" means items used for therapeutic or diagnostic purposes essential for patient care, such as dressings, catheters, or syringes.

(77) "Medical Staff" means, the organized body composed of all specified professional personnel, appointed by the governing body and granted privileges to practice in the facility or agency.

(78) "Medication" means any drug, chemical compound, suspension, or preparation suitable for internal or external use by persons for the treatment or prevention of disease or injury.

(79) "Mental Retardation" means significantly subaverage general intellectual functioning resulting in, or associated with, concurrent impairments in adaptive behavior and manifested during the developmental period. Significantly subaverage general intellectual functioning is operationally defined as a score of two or more standard deviations below the mean on a standardized general intelligence test. Developmental period is defined as the period between conception and the 18th birthday.

(80) "Mental Disease" means any disease listed as a mental disorder in the ICD-9-CM excluding the codes for senility or organic brain syndrome (290 through 294.9 and 310 through 310.9), the codes for adjustment reaction (309); the codes for psychic factors associated with diseases classified elsewhere (316); and the codes for mental retardation (317 through 319). Codes 314 through 315.9 may also be excluded for individuals suffering impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons. Codes 309 and 316 are also excluded.

(81) "Mobile" means a person who is able to take action for self-preservation under emergency conditions with the assistance of supportive equipment such as crutches, braces, walkers, or wheelchairs, but without the assistance, except for verbal instructions, from other persons.

(82) "Neglect" means the same as 62A-3-301(10).

(83) "New Construction" means any of the following:

(a) New medical or health care facilities licensed under these rules;

(b) Addition(s) to an existing building;

(c) Alteration(s) or modification(s) (other than strictly repair and maintenance) costing more than $3,000 or that affect the structure, electrical or mechanical system of a health care facility.

(84) "Non-Ambulatory" means unable to walk without assistance of other persons.

(85) "Nursing Care" means assistance provided to sick or disabled individuals, by or under the direction of licensed nursing personnel, for their health care needs.

(86) "Nursing Home" means any facility licensed by the Department as a nursing care facility that provides licensed nursing care and related services to residents who need continuous health care and supervision.

(87) "Occupational Therapist" means a person currently licensed by the Utah Department of Commerce under Title 58, Chapter 42.

(88) "Oral Surgeon" means a person who has successfully completed a postgraduate program in oral surgery accredited by a nationally recognized accrediting body approved by the U.S. Office of Education and is licensed by the Utah Department of Commerce to practice dentistry.

(89) "PRN medication" means medication which is administered pro re nata. Pro re nata means as needed. The time of medication administration is determined by the resident's need.

(90) "Parent Facility" means all free-standing health facilities under a single ownership licensed under Section 26-21-2 except home health agencies. The parent facility includes:

(a) the main structure, wings, or detached buildings where a service within the scope of the facility's license is offered and any detached building used for storage, heating or cooling equipment located on the main grounds bounded by a city, county or a state street or road, or a property line; and

(b) any structure located outside the main facility grounds connected to the main facility by a heating or cooling system or by a covered walkway where a service is provided within the scope of the parent facility's license.

(91) "Patient" means a resident or person receiving care in a health care facility or agency. Patient, client or resident terms are interchangeable meaning a person who is receiving needed services.

(92) "Patient Care Plan" means an integrated plan of care developed for the patient.

(93) "Pediatric Patients" means infants, children, adolescents, and young adults up to the age of 18.

(94) "Personal Care" means assistance provided to residents in activities of daily living.

(95) "Personal Care Aide" means a person who assists patients or residents in the activities of daily living and emergency first aid; and who may be supervised by a licensed nurse.

(96) "Personal Resource Funds" means monies received by a patient from a variety of sources which the patient may spend as needed or desired.

(97) "Personnel" means individual(s) in training or employed by the health care facility or agency.

(98) "Pharmacist" means a person currently licensed by the Utah Department of Commerce to practice pharmacology pursuant to Title 58, Chapter 17.

(99) "Physical Therapist" means a person currently licensed by the Utah Department of Commerce to practice under Title 58, Chapter 24a.

(100) "Physician" means a person who is licensed to practice medicine and surgery by the Utah Department of Commerce under Section 58-67-301, the Utah Medical Practice Act, or Section 58-68-301, Utah Osteopathic Medical Practice Act, or a physician in the employment of the government of the United States who is similarly qualified.

(101) "Place of Residence" means the place a patient makes his home. This may be a house, an apartment, a relative's home, housing for the elderly, a retirement home, an assisted living facility, or a place other than a health care facility which provides continuous nursing care.

(102) "Plan of Care or Plan of Treatment" are interchangeable terms which mean a written plan based on assessment data or physician orders that identifies the patient's needs, who shall provide needed services and how often, treatment goals, and anticipated outcomes.

(103) "Podiatrist" means a person registered and licensed by the Utah Department of Commerce under Title 58, Chapter 5.

(104) "Policies and Procedures" means a set of rules adopted by the governing body to govern the health care facility or agency's operation.

(105) "Practitioner" means a registered nurse, with advanced or specialized training, who is licensed by Utah Department of Commerce, Title 58, Chapter 31a.

(106) "Prognosis" means a statement given as:

(a) the likelihood of an individual achieving stated goals;

(b) the degree of independence likely to be achieved; or

(c) the length of time to achieve goals.

(107) "Program" means a general term for an organized system of services designed to address the treatment needs of the patient.

(108) "Protected Living Arrangement" means provision for food, shelter, sleeping accommodations, and supervision of activities of daily living for persons of any age who are unable to independently maintain these basic needs and functions.

(109) "Provider" means a supplier of goods or services.

(110) "Public Agency" means an agency operated by a state or local government.

(111) "Public Health Center" means a publicly owned facility for the provision of public health services, including related facilities such as laboratories, clinics, and administrative offices operated in connection with public health centers.

(112) "Qualified Mental Retardation Professional (QMRP)" means a person who has specialized training or one year of experience in treating or working with the mentally retarded including any one of the following: psychologist with a master's degree from an accredited program; licensed physician; educator with a bachelor's degree in education from an accredited program; social worker with a bachelor's degree in social work from an accredited program or a field other than social work and at least three years of social work experience under the supervision of a qualified social worker; licensed

physical or occupational therapist; licensed speech pathologist or audiologist; registered nurse; therapeutic recreation specialist who is a graduate of an accredited program and is licensed to perform recreational therapy under the provisions of Title 58, Chapter 40; Rehabilitation counselor who is certified by the Committee on Rehabilitation Counselor Certification.

(113) "Quality of Care" means the provision of patient treatment, including medical or nursing care as well as restorative therapies.

(114) "Quality of Life" means how a patient experiences the state of existing and functioning in the facility environment, and is related to the human and humane processes involved in normal human functioning, including rights and freedoms.

(115) "Recovery," for birthing centers, means that period or duration of time starting at birth and ending with the discharge of a client from the birthing center, or the period of time between the birth and the time a mother leaves the premises of the birthing center.

(116) "Recreational Therapist" means any person licensed to perform recreational therapy under the provisions of Title 58, Chapter 40.

(117) "Referred Outpatient" means a person who is receiving his medical diagnosis, treatment, or other health care services from one or more sources outside the hospital, but who receives from the hospital diagnostic tests or examinations ordered by health care practitioners, legally permitted to order such tests and examinations, and to whom the hospital reports findings and results.

(118) "Refurbish" means to clean or otherwise change the appearance without making significant changes in the existing physical structure of a facility.

(119) "Registered Nurse" means any person who is registered and licensed by the Utah Department of Commerce to practice as a registered nurse under Title 58, Chapter 31.

(120) "Rehabilitation" means a program of care designed to restore a patient to a former capacity.

(121) "Relative" means spouse, parent, stepparent, son, daughter, brother, sister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin or any such person denoted by the prefix "grand" or "great" or the spouse of any of the persons specified in this definition, even if the marriage has been terminated by death or dissolution.

(122) "Remodel" means to reconstruct or to make significant changes in the existing physical structure of a facility.

(123) "Representative" means a person employed by the Department.

(124) "Request for Hearing" means any clear expression in writing by a provider requesting an opportunity to appeal a Department action following R432-30.

(125) "Resident Living" means residential services provided by an ICF/MR facility.

(126) "Responsible Person" means an individual, relative, or close friend designated in writing by the resident, or a court-appointed guardian or person with durable power of attorney, who assists the resident and assumes responsibility for the resident's well-being and for any care not provided by the facility or agency.

(127) "Restrictive Procedures" means a class of procedures designed to reduce or eliminate maladaptive behaviors including:

(a) restricting an individual's movement;

(b) restricting an individual's ability to obtain positive reinforcement; and

(c) restricting an individual's ability to participate in programs.

(128) "Safety Device" means a protective device used to offer protection from inadvertent acts (such as falling out of bed) as well as deliberate acts (such as removing a nasogastric tube).

(129) "Seclusion" means a procedure that isolates the patient in a specific room or designated area to temporarily remove the patient from the therapeutic community and reduce external stimuli.

(130) "Self Administration of Medication" means the act by which a resident independently removes an individual dose from a properly labeled container and takes that medication. The resident must know the medication type, dosage and frequency of administration.

(131) "Service Delivery Area" means any area in the facility where a specific service or group of services is organized, performed or carried out. For example the dietary services area includes the kitchen; patient care services delivery area includes patient rooms, corridors, and adjacent areas.

(132) "Service Pattern" means a continuum of medical and psychological needs expressed as a type and used in evaluation for appropriate placement and treatment purposes.

(133) "Social Service Worker (SSW)" means a person currently licensed by the Utah Department of Commerce to function as a social service worker under Title 58, Chapter 60.

(134) "Social Worker, Certified (CSW)" means a person currently licensed by the Utah Department of Commerce to practice social work under Title 58, Chapter 60.

(135) "Specialty Hospital" means a hospital which provides specialized diagnostic, therapeutic, or rehabilitative services in the recognized specialty or specialties for which the hospital is licensed.

(136) "Speech-Language Pathologist" means a person licensed by the Utah Department of Commerce to practice speech-language pathology pursuant to Title 58, Chapter 41.

(137) "Substantial Noncompliance" means any occurrence of a Class I violation, or the occurrence of one or more Class II violations resulting in continuous noncompliance, or chronic noncompliance with one or more rule requirements in the administrative rules specific to the health care facility licensure category.

(138) "Summary Report" means a compilation of pertinent facts from the clinical notes regarding a patient, usually submitted to the patient's physician as part of a plan of treatment.

(139) "Supervision" means guidance of another person or persons by a qualified person to assure that a service, function, or activity is provided within the scope of a license, certificate, job description, or instructions.

(140) "Support Person" means the individual(s) selected or chosen by a mother to provide emotional support and to assist her during the process of labor and childbirth.

(141) "Surgeon General" means the surgeon general of the

United States public health service.

(142) "Therapist" means a professionally trained licensed or registered person (such as a physical therapist, occupational therapist, or speech therapist), who is skilled in applying treatment techniques and procedures under the general direction of a physician.

(143) "Training and Habilitation Services" means services intended to improve or aid the intellectual, sensorimotor, and emotional development of a patient or resident.

R432-1-4. Identification Badges.

(1) Health care facilities and agencies shall ensure that the following persons, shall wear an identification badge:

(a) professional and non-professional employees who provide direct care to patients; and

(b) volunteers.

(2) The identification badge shall include the following:

(a) the person's first or last name; however, the badge does not have to reveal the persons full name; and

(b) the person's title or position, in terms generally understood by the public.

KEY: health facilities
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Notice of Continuation January 20, 1999

R432. Health, Health Systems Improvement, Health Facility Licensure.
R432-2. General Licensing Provisions.
R432-2-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-2-2. Purpose.

The purpose of this rule is to define the standards that health care facilities and agencies must follow in order to obtain a license. No person or governmental unit acting severally or jointly with any other person, or governmental unit shall establish, conduct, or maintain a health facility in this state without first obtaining a license from the Department. Section 26-21-8.

R432-2-3. Exempt Facilities.

The provisions of Section 26-21-7 apply for exempt facilities.

R432-2-4. Distinct Part.

Licensed health care facilities that wish to offer services outside the scope of their license or services regulated by another licensure rule, with the exception of federally recognized Swing Bed Units, shall submit for agency review a program narrative defining the levels of service to be offered and the specific patient population to be served. If the program is determined to require a license, the facility must meet the definition of a distinct part entity and all applicable codes and standards and obtain a separate license.

R432-2-5. Requirements for a Satellite Service Operation.

(1) "Satellite Operation" means a health care treatment service that:

(a) is administered by a parent facility within the scope of its current license,

(b) is in a location not contiguous with the parent facility,

(c) does not qualify for licensure under Section 26-21-2, and

(d) must be approved by the Department for inclusion under the parent facility's license and identified as a remote service.

(2) A licensed health care facility that wishes to offer a health care service at a remote location shall submit for Department review a program narrative and one set of construction drawings. The program narrative shall define at least the following:

(a) The location of the remote facility (street address);

(b) The capacity of the remote facility;

(c) The license category of the parent facility;

(d) The service to be provided at the remote facility (must be a service authorized under the parent facility license);

(e) All ancillary administrative and support services to be provided at the remote facility; and

(f) The Uniform Building Code occupancy classification of the remote facility physical structure.

(3) Upon receipt of the satellite service program narrative and construction drawings, the Department shall make a determination of the applicable licensing requirements including the need for Distinct Part licensure as defined in R432-2-4. In determining the appropriate licensing requirements, the Department shall verify at least the following items:

(a) There is only a single health care treatment service provided and it falls within the scope of the parent facility license;

(b) The remote facility physical structure complies with all construction codes appropriate for the service provided;

(c) All necessary administrative and support services for the specified treatment service are available, on a continuous basis during the hours of operation, to insure the health, safety, and welfare of the clients.

(4) A facility that qualifies as a single satellite service treatment center shall be issued a separate license identifying it as a "satellite service" of the licensed parent facility. This license shall be subject to all requirements set forth in R432-2 of the Health Facility Rules.

(5) A parent facility that wishes to offer more than one health care service at the same remote site shall either obtain a satellite service license for each service offered as described above or obtain licensure for the remote complex as a free-standing health care facility.

(6) A satellite facility shall not be permitted within the confines of another licensed health care facility. Currently licensed satellite operations in other licensed health care facilities, as currently approved, shall be grandfathered and allowed to continue to operate.

R432-2-6. Application.

(1) Application Form. An applicant for a license shall file a Request for Agency Action/License Application with the Utah Department of Health on a form furnished by the Department.

(2) Required Clearances. Each applicant shall comply with all zoning, fire, safety, sanitation, building and licensing laws, regulations, ordinances, and codes of the city and county in which the facility or agency is located. The applicant shall obtain the following clearances and submit them as part of the completed application to the licensing agency:

(a) Fire Clearance. A certificate of fire clearance from the State Fire Marshal or designated local fire authority certifying compliance with local and state fire codes is required with initial and renewal application, change of ownership, and at any time new construction or substantial remodeling has occurred.

(b) Food Service Sanitation Clearance. A satisfactory report by a local or state sanitarian is required for facilities providing food service at initial application and with a change of ownership.

(c) Certificate of Occupancy from the local building official at initial application, change of location and at the time of any new construction or substantial remodeling.

(3) The licensee shall comply with the following requirements:

(a) List all officers, members of the boards of directors, trustees, stockholders, partners, or other persons who have a greater than 25 percent interest in the facility;

(b) Provide the name, address, percentage of stock, shares, partnership, or other equity interest of each person;

(c) List, for all persons, all health care facilities in the state or other states in which they are officers, directors, trustees, stockholders, partners, or in which they hold any interest;

(4) The licensee shall provide the following written assurances on all individuals listed in R432-2-6(3):

(a) None of the persons has been convicted of a felony;

(b) None of the persons has been found in violation of any local, state, or federal law which arises from or is otherwise related to the individual's relationship to a health care facility; and

(c) None of the persons who has currently or within the five years prior to the date of application had previous interest in a licensed health care facility that has been any of the following:

(i) subject of a patient care receivership action;

(ii) closed as a result of a settlement agreement resulting from a decertification action or a license revocation;

(iii) involuntarily terminated from participation in either Medicaid or Medicare programs; or

(iv) convicted of patient abuse, neglect or exploitation where the facts of the case prove that the licensee failed to provide adequate protection or services for the person to prevent such abuse.

R432-2-7. License Fee.

A license fee as established in accordance with Subsection 26-21-5(1)(c) shall be submitted with the completed application form. A current fee schedule is available from the Bureau of Health Facility Licensure upon request. Late fees shall be assessed according to the fee schedule.

R432-2-8. Additional Information.

The Department may require additional information or review other documents to determine compliance with licensure rules. These include:

(1) Architectural plans and a description of the functional program.

(2) Policies and procedures manuals.

(3) Verification of individual licenses, registrations or certification required by the Utah Department of Commerce.

(4) Data reports including the submission of the annual report at the Departments request.

(5) Documentation that sufficient assets are available to provide services: staff, utilities, food supplies, and laundry for at least a two month period of time.

R432-2-9. Initial License Issuance or Denial.

(1) Decision. The agency shall render a decision on an initial license application within 60 days of receipt of a complete application packet or within six months of the date the first component of an application packet is received; provided, in either case, a minimum of 45 days is allowed for the initial policy and procedure manual review.

(2) License Granted. Upon verification of compliance with licensing requirements the Department shall issue a provisional license.

(3) License Denied. The Department shall issue a written notice of agency decision under the procedures for adjudicative proceedings (R432-30) denying a license if the facility is not in compliance with the applicable laws, rules, or regulations. The notice shall state the reasons for denial.

(4) Reapplication. An applicant who is denied licensure may reapply for initial licensure as a new applicant and shall be required to initiate a new request for agency action as described in R432-2-6.

(5) Fee Refund. An administrative fee established by the Health Facility Committee shall be assessed on all denied license applications. This fee shall be subtracted from any fees submitted as part of the application packet and a refund for the balance returned to the applicant.

R432-2-10. License Contents and Provisions.

(1) License Content. The license shall document the following:

(a) the name of the health facility,

(b) licensee,

(c) the type of facility,

(d) approved capacity,

(e) street address of the facility,

(f) issue and expiration date of license,

(g) variance information, and

(h) license number.

(2) Nontransferable. The license shall not be assignable or transferable.

(3) License Surrender. Each license is the property of the Department and shall be returned within five days if the licensee notifies the Department of closure or upon the request of the Department.

(4) Posting of License. The license shall be posted on the licensed premises in a place readily visible and accessible to the public.

R432-2-11. Expiration and Renewal.

(1) Licensing Period. Each standard license shall expire at midnight, on the last day of the month, 12 months from the anniversary date of the date of the initial license unless previously revoked by the Department.

(2) In the event the facility is operating under a conditional license for a period extending beyond the expiration date of the current license the Department shall establish a new expiration date.

(3) Renewal Application. A Request for Agency Action/License Application form, applicable fees, clearances, and the annual report for the previous calendar year (when required by the Department) shall be filed with the Department 15 days before the current license expires.

(4) License Expiration. A license shall expire on the date specified on the license unless the agency requests and is granted an extension from the Department.

(5) Compliance Required. The Department shall renew a standard license upon verification that the licensee and facility are in compliance with all applicable license rules.

(6) Nonrenewal. Facilities no longer providing patient care or client services may not have their license renewed.

(7) Late fees shall be assessed according to the fee schedule.

R432-2-12. New License Required.

(1) Changes to License. The licensee shall submit a Request for Agency Action/License Application, fees, and required documentation for a new license at least 30 days before

any of the following proposed or anticipated changes occur:

(a) Occupancy of a new or replacement facility.

(b) Change of ownership.

(2) Required Documentation. Before the Department issues a new license, the prospective licensee shall provide documentation that:

(a) All patient care records, personnel records, staffing schedules, quality assurance committee minutes, in-service program records, and other documents required by applicable rules remain in the facility and have been transferred to the custody of the new licensee.

(b) The existing policy and procedures manual or a new manual has been approved by the Department and adopted by the facility governing body before change of ownership occurs.

(c) New contracts for professional or other services not provided directly by the facility have been secured.

(d) New transfer agreements have been drafted and signed.

(e) Written documentation exists of clear ownership or lease of the facility by the new owner.

(3) Patient Fund Accounting. Upon sale or other transfer of ownership, the licensee shall provide the new owner with a written accounting, prepared by an independent certified public accountant, of all patient funds being transferred, and obtain a written receipt for those funds from the new owner.

(4) Outstanding Deficiencies. The prospective licensee shall be responsible for all uncorrected rule violations and deficiencies including any current plan of correction submitted by the previous licensee unless a revised plan of correction, approved by the Department, is submitted by the prospective licensee before the change of ownership becomes effective.

(5) Surrender of Previous License. When a license is issued to the new owner the previous licensee shall return his license to the Department.

(6) Compliance Required. Upon verification that the facility is in compliance with all applicable licensure rules, the Department may issue a new license effective the date compliance is determined. Refer to R432-2-9.

R432-2-13. Change in Licensure Status.

(1) License Modification or Amendment. The licensee shall submit a Request for Agency Action/License Application to amend or modify licensure status at least 30 days before any of the following proposed or anticipated changes:

(a) Increase or decrease of licensed capacity.

(b) Change in name of facility.

(c) Change in license category.

(d) Change of license classification.

(e) Change in administrator.

(2) Additional Fees. An increase of licensed capacity may incur an additional license fee if the increase exceeds the maximum number of units in the fee category division of the existing license. This fee shall be the difference in license fee for the existing and proposed capacity according to the License Fee Schedule.

(3) Compliance Required. Upon verification that the licensee and facility are in compliance with all applicable licensure rules, the Department may issue an amended or modified license effective the date compliance is determined.

R432-2-14. Facility Ceases Operation.

(1) A licensee that ceases operation shall complete the following:

(a) Notify the Department and the patients or their next of kin at least 30 days before the effective date of closure.

(b) Make provision for the safe keeping of records.

(c) Return all patients' monies and valuables at the time of discharge.

(d) The licensee must return the license to the licensing agency within five days after the facility ceases operation.

(2) In the event that the facility's license is revoked or the facility is served an emergency closure order, the licensee shall document for Department review the following:

(a) The location and date of discharge for all residents,

(b) The date that notice was provided to all residents and responsible parties to ensure an orderly discharge and assistance with placement, and

(c) The date and time that the facility complied with the closure order.

R432-2-15. Provisional License.

(1) A provisional license is an initial license issued to a licensee for a probationary period of six months.

(a) In granting a provisional license, the Department shall be assured that the facility has the potential to provide services and shall be in full compliance with licensure rules during the six month period.

(b) A provisional license is nonrenewable, and shall be issued for no longer than six months, and no more than one provisional license shall be issued to any health facility in any 12-month period.

(2) If the licensee fails to meet terms and conditions of licensure before the expiration date of the provisional license, the license shall automatically expire.

R432-2-16. Conditional License.

(1) A conditional license is a remedial license issued to a licensee found to have:

(a) a Class I violation or a Class II violation that remains uncorrected after the specified time for correction,

(b) more than three cited repeat Class I or II violations from the previous year, or

(c) fails to fully comply with administrative procedures for licensing. A standard license is revoked by the issuance of a conditional license.

(2) The Department may not issue a conditional license after the expiration of a provisional license.

(3) In granting a conditional license, the Department shall be assured that the lack of full compliance does not harm the health, safety, and welfare of the patients.

(4) The Department shall establish the period of time for the Conditional License based on an assessment of the nature of the existing violations and facts available at the time of the decision.

(5) The Department shall set conditions whereby the licensee must comply with an identified plan of correction.

(6) If the licensee fails to meet the conditions before the expiration date of the conditional license, the license shall automatically expire.

R432-2-17. Standard License.

A standard license shall be issued upon completion of the following:

(1) the licensee meets the conditions attached to a Provisional or Conditional license;

(2) the licensee corrects the identified rule violations; or

(3) when the facility assures the Department that they comply with R432-2-11 to R432-2-12.

R432-2-18. Variances.

(1) Variance Request.

(a) A health facility may submit a request for agency action to obtain a variance from state rules at any time.

(b) An applicant requesting a variance shall file a Request for Agency Action/Variance Application with the Utah Department of Health on forms furnished by the Department.

(c) The Department may require additional information from the facility before acting on the request.

(d) The Department shall act upon each request for variance in writing within 60 days of receipt of a completed request.

(2) Granting a Variance Request.

(a) If a request is granted, the license shall be amended in writing to indicate that the facility has been granted a variance which may be renewable or non-renewable. A copy of the approved variance shall be kept on file in the facility and made available to all interested parties on request.

(b) The Department shall file the request and variance with the license application.

(c) The terms of a requested variance may be modified upon agreement between the Department and the facility.

(d) The Department may impose such conditions on the granting of a variance as it determines necessary.

(e) The Department may limit the duration of any variance.

(3) Denying a Variance Request.

(a) The Department shall issue a written notice of agency decision denying a variance upon determination that the variance is not justified.

(b) If the respondent feels aggrieved by the decision, further administrative and judicial review procedures may be initiated (see R432-30.)

(4) Revocation of Variance. The Department may issue a notice of agency action to revoke a variance if:

(a) The variance is adversely affecting the health, safety, or welfare of the residents.

(b) The facility fails to comply with the conditions of the variance as granted.

(c) The licensee notifies the Department in writing that he wishes to relinquish the variance and be subject to the rule previously varied.

(d) There is a change in the law.

KEY: health facilities

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Notice of Continuation January 11, 1999	**26-21-11**
	26-21-12
	26-21-13

R432. Health, Health Systems Improvement, Health Facility Licensure.

R432-3. General Health Care Facility Rules Inspection and Enforcement.

R432-3-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-3-2. Purpose.

This rule delineates the role and responsibility of the Department and Health Facility Licensure Bureau in the enforcement of rules and regulations pertaining to health, safety, and welfare in all licensed and unlicensed health facilities regulated by Title 26, Chapter 21. These provisions provide guidelines and criteria to ensure that sanctions are applied consistently and appropriately.

R432-3-3. Deemed Status.

The Department may grant licensure deemed status to facilities accredited by the Joint Commission on Accreditation of Healthcare Organizations (Joint Commission) or Community Health Accreditation Program (CHAP) in lieu of the annual licensure inspection by the Department upon completion of the following by the facility or agency:

(1) As part of the annual license renewal process, the licensee shall identify on the Request for Agency Action/Application its desire to:

(a) initiate deemed status,

(b) continue deemed status, or

(c) relinquish deemed status during the licensure year of application.

(2) This request shall constitute written authorization for the Department to attend the summation conference.

(3) Upon receipt from the accrediting agency, the facility shall submit copies of the following:

(a) Accreditation Certificate;

(b) Joint Commission Statement of Construction;

(c) Survey Reports and Recommendations;

(d) Progress reports of all corrective actions underway or completed in response to accrediting body's action or Department recommendations.

(4) Department Regulatory Responsibility.

The Department may assert regulatory responsibility and authority pursuant to applicable state and federal statutes to include:

(a) annual and follow up inspections,

(b) investigation, or

(c) verification of the following:

(i) Violations of state law, rule, or standard identified in a Department survey.

(ii) Violations of state law, rule, or standard identified in the accrediting body's survey.

(iii) Complaints against the facility or other evidence that indicates non-compliance with state rules.

(iv) Licensed health care facilities that are physically connected to or under the licensure of the accredited facility.

(v) Facilities granted a provisional accreditation by the Joint Commission until a full accreditation status is achieved.

(vi) Any facility that does not have a current, valid accreditation certificate.

(vii) Construction, expansion, or remodeling projects required to comply with standards for construction promulgated in the rules by the Health Facility Committee.

(5) Validation Inspections. The Department may annually conduct validation inspections of facilities or agencies accredited for the purpose of determining compliance with state licensure requirements. If a validation survey discloses a failure to comply with the standards for licensure, the provisions relating to regular annual inspection shall apply.

R432-3-4. Statement of Findings.

(1) Each facility may be inspected by the Department or its designee, at least once during each year that a license has been granted, to determine compliance with standards and the applicable rules and regulations.

(2) Whenever the Department has reason to believe that a health facility is in violation of Title 26, Chapter 21 or any of the these rules, 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 immediately.

(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 health facility or agency which presents imminent danger to patients or residents of the facility or agency, 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 health facility agency which has a direct or immediate relationship to the health, safety, or security of patients or residents in a health facility or agency.

(c) "Class III Violation" means establishing, conducting, managing, or operating a health care facility or agency regulated under Title 26, Chapter 21 and this rule without a license or with an invalid license.

(4) A facility may be cited with one or more violations.

(5) Contents of the Statement. 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.

R432-3-5. Plan of Correction.

(1) A health 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 the correction is accomplished;

(c) Identify the date of 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. A revised plan of correction shall be submitted within 14 days of receipt of a request.

(4) If the violation has been corrected before submission and approval of a Plan of Correction, the facility shall submit a report of correction.

(5) If violations remain uncorrected after the time specified or if the facility fails to submit a plan of correction as specified, the Department shall notify the facility within ten working days of further agency enforcement action.

(6) Any person aggrieved by the agency action shall have the right to seek review under the provisions R432-30 Adjudicative Proceedings.

(7) Corrective Action Required for Class I Violations.

(a) If a licensed or unlicensed health facility is served with a Statement of Findings citing a Class I violation, the situation, condition, or practice constituting the Class I violation shall be abated or eliminated immediately, unless a fixed period of time is determined by the Department and is specified in the Plan of Correction.

(b) A follow-up inspection shall be conducted within 14 calendar days or within the agreed upon correction period to determine correction of Class I violations.

(c) Failure to correct Class I Violations.

When a health facility or agency fails to correct Class I violations as outlined in the accepted Plan of Correction, sanctions or penalties shall be pursued through a formal adjudicative proceeding R432-30.

(8) Corrective Action Required for Class II Violations.

(a) 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 unless justification is provided in the accepted Plan of Correction.

(b) Failure to Correct Class II Violations

(i) The Department may issue a conditional license or impose sanctions to the license or initiate a formal adjudicative proceeding to close the facility when a facility is cited with a Class II violation and fails to take required corrective action R432-30.

(ii) The Department shall determine which sanction to impose by considering the following:

(A) The gravity of the violation.

(B) The effort exhibited by the licensee to correct violations.

(C) Previous facility violations.

(D) Other relevant circumstances.

(9) Failure to Correct Class III Violations.

(a) A facility served with a Statement of Findings for a Class III violation shall be given 14 days to file a Request for Agency Action/License Application form and pay the required licensing fee.

(b) The Statement may include the names of individuals residing in the facility who require services outside the scope of the proposed licensure category.

(c) Identified individuals shall be immediately relocated to a facility capable of meeting their needs.

(d) If the facility fails to submit the request as specified, the Department shall issue a written notice of agency action ordering closure of the facility.

(e) If the Executive Director determines that the lives, health, safety or welfare of the patients or residents cannot be adequately assured pending a full formal adjudicative proceeding, he may order immediate closure of the facility under an emergency adjudicative proceeding, Rule R432-30.

R432-3-6. Sanction Action on License.

(1) The Department may initiate an action against a health facility pursuant to Section 26-21-11. That action may include the following sanctions:

(a) Denial or revocation of a license if the facility fails to comply with the rules established by the Committee, 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 people of the state.

(b) Restriction or prohibition on new admissions to a health facility for:

(i) any Class I deficiency;

(ii) Class II deficiencies which indicate a pattern of poor care which has resulted in the substandard quality of care of patients;

(iii) Repeat Class I or II deficiencies which demonstrate continuous noncompliance or chronic noncompliance with the rules; or

(iv) permitting, aiding, or abetting the commission of any illegal act in the health 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 as monitors in the facility until such time as corrective action is completed.

(e) Assessment of the cost incurred by the Department in placing the monitors to be reimbursed by the facility.

(2) If the Department imposes a restriction or prohibition on new admissions to a long-term care facility or agency, the Department shall send a written notice to the licensee. The licensee shall post the copies of the notice on all public entry doors to the licensed long-term care facility or agency if:

(i) the long-term care facility or agency has previously received a restriction or prohibition on new admissions within the previous 24 month period;

(ii) the long-term care facility or agency has failed to meet the timeframes in the Plan of Correction which is the basis for the restriction or prohibition on admissions; or

(iii) the Department has notified the long-term care facility or agency that circumstances in the facilty or agency indicate actual harm or a serious and immediate threat to patients.

(3) If telephone inquiries are made to a long-term care facility or agency with a restriction or prohibition on new admissions, the facility or agency shall inform the caller, during the call, about the restriction or prohibition on admissions. If the facility or agency fails to inform the caller, the department may assess penalties as allowed by statute and shall require the facility or ageny to post a written notice on all public entry doors.

(4) Local Agency Coordination. The above actions shall be coordinated with local health, long term care ombudsman, zoning, building, and fire officials.

R432-3-7. Immediate Closure of Facility.

(1) Emergency Proceeding. The Department may order the immediate closure of any licensed or unlicensed health facility when the health, safety, or welfare of the patients or residents cannot be assured pending a full formal adjudicative proceeding.

(2) The provisions for an emergency adjudicative proceeding as provided in 63-46b-20 shall be followed.

(3) Notice to Facility. The Department shall serve an order that the facility is ordered closed as of a given date. The order shall state:

(a) the reasons the facility is ordered closed;

(b) cite the statute or rule violated; and

(c) advise as to the commencement of a formal adjudicative proceeding in accordance with other provisions of this rule.

(4) Failure to Comply. The Department may, upon the advice of the attorney general, maintain an action in the name of the state for injunction or other process against the health facility which disobeys a closure order. Section 26-21-15.

(5) Patient Relocation. The Department, if requested, may assist in relocating patients or residents to another licensed facility.

(6) Lesser Sanctions. The Department may pursue other sanctions in lieu of the closure order.

(7) The Department may in addition to emergency closure seek criminal penalties.

R432-3-8. Mandatory License Revocation.

(1) The Department may revoke a license or refuse to renew a license for a health care facility that is in chronic noncompliance with one or more of the rule requirements identified as mandatory license revocation criteria in the rules specific to the facility licensure category.

(2) The Department may not revoke a license or refuse to renew a license for chronic noncompliance on the third or subsequent violation unless it has documented within 14 working days from receipt of the statement of findings two prior violations and given the licensee or facility administrator a written notice. The written notice shall include a statement that continued violation could result in revocation of the license.

(3) If the Department revokes the license because of chronic noncompliance and the evidence supports the Department's finding of chronic noncompliance, no lesser sanction may be substituted, either by the Department or upon subsequent review by the Health Facility Committee or the courts.

R432-3-9. Medicare/Medicaid Certification.

(1) The Department may accept survey and complaint investigation findings of the Bureau of Medicare/Medicaid Program Certification and Resident Assessment as its own in the conduct of the Bureau of Licensing responsibilities under state law.

(2) The Bureau of Licensing may review all Statements of Findings and Plans of Correction, including surveys, follow up surveys, and complaint investigation actions, completed by the Bureau of Medicare/Medicaid Program Certification and Resident Assessment. The Statements of Findings and Plans of Correction may be reviewed for compliance with state rules to include:

(a) assessment of chronic non-compliance history in accordance with Subsection R432-1-3(28);

(b) assessment of continuous non-compliance history in accordance with Subsection R432-1-3(24).

KEY: health facilities

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Notice of Continuation January 11, 1999	**26-21-14 through 26-21-16**

R432. Health, Health Systems Improvement, Health Facility Licensure.

R432-4. General Construction.

R432-4-1. Legal Authority.

This rule is adopted pursuant to Title 26 Chapter 21 for General Hospitals; Specialty Hospitals; Ambulatory Surgical Facilities; Nursing Care Facilities; Inpatient Hospices; Birthing Centers; Abortion Clinics; and Small Health Care Facilities, Levels I, II and III.

R432-4-2. Purpose.

The purpose of this rule is to promote the health and welfare of individuals receiving services through the establishment and enforcement of construction standards.

R432-4-3. General Design.

(1) The licensee is responsible for assuring compliance with this section.

(2) When testing and certification compliance can only be verified through written documentation, the documentation shall be maintained in the facility for Department inspection.

(3) Additional requirements for individual health care facility categories are included in the individual category construction rules sections of the Health Facility Licensure Rules, R432. When conflicts exist between R432-4 and individual category rules, the individual category rules govern.

(4) When conflicts exist between applicable codes, the most restrictive code applies.

(5) When other authorities having jurisdiction adopt more restrictive requirements than contained in these rules, the more restrictive requirements apply.

(6) When complete, the licensee shall ensure the building complies with the functional requirements for the applicable licensure classification and shall ensure provisions are made for all facilities and equipment necessary to meet the care and safety needs of all clients served.

R432-4-4. Site Location.

(1) The site of the licensed health care facility shall be accessible to both community and service vehicles, including fire protection apparatus.

(2) Facilities shall be located to ensure that public utilities are available.

R432-4-5. Site Design.

(1) Paved roads shall be provided within the property for access to all entrances, service docks and for fire equipment access to all exterior walls.

(2) Paved walkways shall be provided for pedestrian traffic.

(3) Paved walkways shall be provided from every required exit to a dedicated public way.

(4) Hospitals with an organized emergency service shall have well marked emergency access to facilitate entry from public roads or streets serving the site. Vehicular or pedestrian traffic shall not conflict with access to the emergency service area.

R432-4-6. Parking.

(1) Parking shall be provided in accordance with local zoning ordinances.

(2) If local zoning ordinances do not exist, Section 3.2.B Parking, from Guidelines for Construction and Equipment of Hospital and Medical Facilities 1992-1993 Edition shall apply.

(3) Requirements of the Americans with Disabilities Act Accessibility Guidelines, (ADAAG) for handicapped parking access shall apply.

R432-4-7. Environmental Pollution Control.

(1) Public Law 91-190, National Environment Policy Act, requires the site and project be developed to minimize any adverse environmental effects on the neighborhood and community.

(2) All required environmental clearances and permits shall be obtained from local jurisdictions and the Utah Department of Environmental Quality.

(3) Copies of clearances shall be retained in the facility for inspection by the Department.

R432-4-8. Standards Compliance.

(1) The following standards are adopted and incorporated by reference:

(a) American National Standards Institute, Standard A17.1 (ANSI A17.1), American National Standard Safety Code for Elevators, Dumbwaiters, Escalators and Moving Stairs, 1990 edition;

(b) Illuminating Engineering Society of North America, IESNA, publication CP29, Lighting for Health Facilities, 1985 edition;

(c) Illuminating Engineering Society of North America Lighting Handbook, 1987 edition, Volume 2 Applications.

(d) The following chapters of the National Fire Protection Association Life Safety Code, NFPA 101, 1991 edition:

(i) Chapter 1, Administration;

(ii) Chapter 2, Fundamental Requirements;

(iii) Chapter 3, Definitions;

(iv) Chapter 4, Classification of Occupancy and Hazard of Contents;

(v) Chapter 5, Means of Egress;

(vi) Chapter 6, Features of Fire Protection;

(vii) Chapter 7, Building Service and Fire Protection Equipment;

(viii) Chapter 12, New Health Care Occupancies;

(ix) Chapter 13, Existing Health Care Occupancies;

(x) Chapter 31, Operating Features.

(2) The following codes and standards apply to health care facilities. The licensee shall obtain clearance from the authority having jurisdiction and submit a copy of the documentation to the Department verifying compliance with these codes and standards as they apply to the category of health care facility being constructed:

(a) local zoning ordinances;

(b) Uniform Building Code;

(c) Americans with Disabilities Act Accessibility Guidelines, (ADAAG) 28 CFR 36, Appendix A, (July 1993);

(d) Uniform Mechanical Code;

(e) Uniform Plumbing Code;

(f) Uniform Fire Code;

(g) ASME Elevator and Escalator A17.1, 1993 edition;

(h) R313. Environmental Health, Radiation Control, 1994;

(i) R309. Environmental Health, Drinking Water and Sanitation, 1994;

(j) R315. Environmental Health, Solid and Hazardous Waste, 1994;

(k) NFPA 13, Standard for Installation of Sprinkler Systems, 1994 edition;

(l) NFPA 70, National Electric Code, 1993 edition;

(m) NFPA 253, Standard Method for Critical Radiant Flux, 1990 edition;

(n) NFPA 255, Standard Method of Test of Surface Burning Characteristics of Building Materials, 1984 edition;

(o) NFPA 258, Standard Research Test Method for Determining Smoke Generation of Solid Materials, 1987 edition;

(p) NFPA 701, Standard Methods of Fire Tests for Flame-Resistant Textiles and Films, 1987 edition;

(q) NFPA 80, Standard for Fire Doors and Windows, 1986 edition;

(r) NFPA 82, Standard on Incinerators, Waste and Linen Handling Systems and Equipment, 1983 edition;

(s) NFPA 99, Standards for Health Care Facilities, 1993 edition;

(t) NFPA 110, Emergency and Standby Power Systems, 1988 edition;

(u) American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE), Handbook of Fundamentals, 1989 edition;

(v) Hydronics Institute, Boiler Ratings: I-B-R, Cast Iron, and SBI Steel Boilers, January 1990;

(w) National Council on Radiation Protection (NCRP), Medical X-ray and Gamma Ray Protection for Energies up to 10 MeV Equipment Design and Use, Pamphlet 33, 1975;

(x) National Council on Radiation Protection (NCRP), Radiation Protection Design Guidelines for 0.1-100, MeV Particle Accelerator Facilities, Pamphlet 51, 1977;

(y) National Council on Radiation Protection (NCRP), Medical X-ray and Gamma Ray Protection for Energies up to 10 MeV Structural Shielding Design and Evaluation, Pamphlet 49, 1976.

(3) The licensee shall obtain a Certificate of Occupancy from the local building official having jurisdiction.

(4) The licensee shall obtain a Certificate of Fire Clearance from the Fire Marshal having jurisdiction.

(5) The licensee shall submit a copy of the certificates to the Department prior to utilization of newly constructed facilities and additions or remodels of existing facilities.

R432-4-9. New Construction, Additions and Remodeling.

(1) New construction, additions and remodels to existing structures, shall comply with Department rules in effect on the date the schematic drawings are submitted to the Department.

(2) NFPA 101 M, Alternative Approaches to Life Safety, shall not be used as a substitute for basic NFPA 101 design criteria for new construction.

(3) If the remodeled area in any building, wing, floor or service area of a building exceeds 50 percent of the total square foot area of the building, wing, floor or service area, then the entire building, wing, floor or service area shall be brought into compliance with adopted codes and rules governing new construction which are in effect on the date the schematic drawings are submitted to the Department.

(4) During remodeling and new construction the safety level which existed prior to the start of work shall be maintained.

R432-4-10. Existing Building Licensure.

(1) Existing buildings, currently licensed, shall conform to Department construction rules in effect at the time of original facility licensure.

(2) Existing buildings which are currently licensed, or which were previously licensed, but are changing classification; or for which the licensed has lapsed, shall comply with requirements for new construction.

R432-4-11. Building Refurbishing.

(1) Paint, carpet, wall coverings, and other new materials installed as part of a refurbishing project shall comply with R432-4-8.

(2) The facility shall keep written documentation of compliance with codes, rules, and standards.

R432-4-12. Mixed Occupancies.

(1) Health care occupancies shall be separated from non-health care occupancies in accordance with requirements of the local jurisdiction.

(2) When separation of occupancies is not practical, the most restrictive occupancy requirements shall apply to all occupancies involved.

R432-4-13. Campus and Contract Facilities.

All housing, treatment, and diagnostic areas and facilities utilized by a patient admitted to a licensed health care facility shall be constructed in accordance with the requirements of R432-4 when:

(1) the area will be used by one or more patients who are physically or mentally incapable of taking independent life saving action in an emergency;

(2) the treatment involved renders the patient incapable of taking independent life saving action in an emergency; or

(3) the patient is rendered incapable of taking independent life saving action in an emergency due to physical or chemical restraints.

R432-4-14. Plan Review.

(1) Health facilities shall obtain Department approval before occupying any new buildings or additions or remodels of existing buildings, systems, or service areas.

(2) Prior to submitting documents for plans review, the facility licensee or designee shall schedule a conference with Department representatives, the licensee's architect, and the licensee or his designee to outline the required plans review process.

(3) The licensee shall submit the following for Department review:

(a) a functional program,

(b) schematic drawings,

(c) design development drawings,

(d) working drawings,

(e) specifications.

(4) The Department shall initiate review when all required documents and fees are received.

(5) Working drawings and specifications for new construction, additions, or remodeling shall have the seal of a Utah licensed architect affixed, in compliance with Section 58-3-10.

(6) The licensee shall pay a plans review and construction inspection fee assessed by the Department in accordance with the fee schedule approved by the Legislature.

(7) Plans approval by the Department shall not relieve the licensee of responsibility for full compliance with R432-4.

(8) Plan approval expires 12 months after the date of the Department's approval letter, or the latest plan review response letter, if construction has not commenced.

(9) Before work proceeds, after a 12 month lapse, plans shall be resubmitted to the Department, a new plan review fee paid, and a new letter of approval obtained from the Department.

(10) The Department shall issue a license or modify a license only after the Department has determined the facility complies with adopted licensure construction rules and has obtained all clearances and certifications.

R432-4-15. Functional Program.

The functional program required in R432-4-14(3)(a) shall include the following:

(1) the purpose and proposed license category of the facility;

(2) services offered, including a detailed description of each service;

(3) ancillary services required to support each function or program;

(4) departmental relationships;

(5) services offered under contract by outside providers and the required in-house facilities to support these services;

(6) services shared with other licensure categories or functions;

(7) a description of anticipated in-patient workloads;

(8) a description of anticipated out-patient workloads;

(9) physical and mental condition of intended patients;

(10) patient age range;

(11) ambulatory condition of intended patients, such as non-ambulatory, mobile, or ambulatory;

(12) type and use of general or local anesthetics;

(13) use of physical or chemical restraints;

(14) special requirements which could affect the building;

(15) area requirements for each service offered, stated in net square feet;

(16) seclusion treatment rooms, if provided, including staff monitoring procedures;

(17) exhaust systems, medical gases, laboratory hoods, filters on air conditioning systems, and other special mechanical requirements;

(18) special electrical requirements;

(19) x-ray facilities, nurse call systems, communication systems, and other special systems;

(20) a list of specialized equipment which could require special dedicated services or special structures.

(21) a description of how essential core services will accommodate increased demand, if a building is designed for expansion;

(22) inpatient services, treatment areas, or diagnostic facilities planned or anticipated to be housed in other buildings, the construction type of the other buildings, and provisions for protecting the patient during transport between buildings.

R432-4-16. Drawings.

Drawings shall show all equipment necessary for the operation of the facility.

(1) Schematic drawings, which may be single line, shall contain the following information:

(a) list of applicable building codes;

(b) location of the building on the site and access to the building for public, emergency, and service vehicles;

(c) site drainage;

(d) any unusual site conditions, including easements which might affect the building or its appurtenances;

(e) relationships of departments to each other, to support facilities, and to common facilities;

(f) relationships of rooms and areas within departments;

(g) number of inpatient beds;

(h) total building area or area of additions or remodeled portions.

(2) Design development drawings, drawn to scale, shall contain the following information:

(a) room sizes;

(b) type of construction, using Uniform Building Code classifications;

(c) site plan, showing relationship to streets and vehicle access;

(d) outline specification;

(e) location of fire walls, corridor protection, fire hydrants, and other fire protection equipment;

(f) location and size of all public utilities;

(g) types of mechanical, electrical and auxiliary systems.

(h) Provisions for the installation of equipment which requires dedicated building services, special structure or which require a major function of space.

(3) Working drawings shall include all previous submitted drawings and specifications.

(a) The licensee shall provide one copy of completed working drawings and specifications to the Department. These documents shall not be returned.

(b) Within 30 days after receipt of the required documentation and plan review fee, the Department shall provide to the licensee and the project architect, a written report of modifications required to comply with construction standards.

(c) The Licensee shall submit the revised plans for review and final Department approval.

R432-4-17. Construction Inspections.

(1) Interim inspections may be conducted by the Department.

(2) When the project is complete and all furnishings and

equipment are in place, but prior to utilization, the licensee shall schedule with the Department a final construction inspection.

R432-4-18. Construction Without Plans Approval.

(1) If construction is commenced without prior Department plans approval, a license shall be issued and occupancy authorized only after as-built drawings have been approved by the Department and the Department has conducted a construction inspection.

(2) The licensee shall correct all noncompliant items and pay the full plans review fee and inspection fee in accordance with the established fee schedule prior to licensure and patient occupancy.

R432-4-19. Existing Buildings Without Plans.

(1) If plans are not available for existing buildings, or for facilities requesting an initial license or license category change, the licensee shall submit to the Department the following information:

(a) A functional program described in R432-4-15;

(b) A report identifying modifications to the building required to bring it into compliance with construction rules for the requested licensure category.

(2) The Department shall review the material submitted and within 30 days after receipt of the required material, furnish to the licensee a letter of approval or rejection. The Department may provide, at its option, a report of modifications required to comply with construction standards.

(3) The licensee shall request and schedule a Department follow up inspection upon completion of the modifications.

(4) Prior to a final Department inspection, the licensee shall pay an inspection fee in accordance with the fee schedule approved by the Legislature.

(5) The Department shall issue a license when the building is in compliance with all licensing rules.

R432-4-20. Construction Phasing.

Projects involving remodeling or additions to existing buildings shall be scheduled and phased to minimize disruption to the occupants of facilities and to protect the occupants against construction traffic, dust, and dirt from the construction site.

R432-4-21. Outpatient Unit Features.

(1) Building entrances used to reach outpatient services shall be at grade level, clearly marked, and located to minimize the need for outpatients to traverse other program areas.

(2) Lobbies of multi-occupancy buildings may be shared if the design prohibits unrelated traffic within or through units or suites of the licensed health care facility.

R432-4-22. Standards for Accessibility.

At least one drinking fountain, toilet, and handwashing facility shall be available on each floor for persons with disabilities.

R432-4-23. General Construction, Ancillary Support Facilities.

(1) Guidelines for Construction and Equipment of Hospital and Medical Facilities 1992-1993 edition, Section 7 and Appendix A (Guidelines), are adopted and incorporated by reference and shall be met except as modified in this section.

(2) Where a modification is cited, the modification supersedes conflicting requirements of the Guidelines.

(3) Housekeeping Rooms. Each room shall have mechanical exhaust with no exhaust air recirculated into the building.

(4) Engineering and Service Equipment. Yard equipment and supply storage areas shall be located so that equipment may be moved directly to the exterior without passing through building rooms or corridors.

(5) Waste Processing Systems. Facilities shall provide sanitary storage and treatment areas for the disposal of all categories of waste, including hazardous and infectious wastes using techniques acceptable to the Utah Department of Environmental Quality, and the local health department having jurisdiction.

(6) General Standards for Details and Finishes. Each room accessible to persons confined to wheelchairs, including all patient toilets and bathing facilities, shall have at least one door which complies with ADAAG, including a minimum leaf width of 34 inches.

(7) Windows.

(a) Windows shall open to the building exterior or to a court which is open to the sky.

(b) Windows shall be equipped with insect screens.

(c) Operation of windows shall be restricted to a maximum opening of six inches to prevent escape or suicide.

(d) Window opening shall be restricted regardless of the method of operation or the use of tools or keys.

(8) Trash chutes, laundry chutes, dumb waiters, elevator shafts, and other similar systems shall not pump contaminated air into clean areas.

(9) Grab bars shall be provided in all public and patient toilet and bath areas in accordance with ADAAG.

(10) Each handwashing fixture shall have a mirror, except as noted in this section.

(a) Mirror placement shall allow for use by individual's who use wheelchairs and those who are ambulatory.

(b) Height requirements shall comply with ADAAG.

(c) One separate full-length mirror may serve for individuals who use wheelchairs.

(11) Showers and bathrooms shall contain recessed soap dishes.

(12) Cubicle curtains and draperies shall be affixed to permanently mounted tracks or rods. Portable curtains or visual barriers are not permitted.

(13) Flooring.

(a) Floors and bases of kitchens, toilet rooms, bath rooms, janitor's closets, soiled workrooms, and other areas subject to frequent wet cleaning shall be homogenous or joints shall be tightly sealed.

(b) Bases shall be integrated with the floor and shall be coved.

(14) In operating rooms, delivery rooms for caesarean sections, isolation rooms, and sterile processing rooms ceilings shall be smooth and crevice free.

(15) Acoustical treatment for sound control shall be provided in areas where sound control is needed, including

corridors in patient areas, nurse stations, dayrooms, recreation rooms, dining areas, and waiting areas.

(16) Carpet.

Carpet in institutional occupancy patient areas, except public lobbies and offices, shall be treated to meet the following microbial resistance ratings as tested in accordance with test methods of the American Association of Textiles, Chemists, and Colorists (AATCC):

(a) Rating: minimum 90% bacterial reduction, test method: AATCC 100.

(b) Rating: maximum 20% fungal growth, test method: AATCC 174-91.

(c) Rating: Exhibits no zone of inhibition, test method: AATCC 174-91.

(d) Carpet and padding shall be stretched taut and be free of loose edges to prevent tripping.

(17) Signage.

Signs shall be provided as follows:

(a) General and circulation direction signs in corridors;

(b) Identification on or by the side of each door; and

(c) Emergency evacuation directional signs;

(18) Elevators. Elevators shall comply with ASME Elevators and Escalators A17.1, 1993 edition and ADAAG.

(a) An intercom connected to a 24-hour staffed position shall be installed in each elevator.

(b) When two or more licensed health care facilities, share a physical plant, elevators may be shared if all requirements of R432-4 are met.

(c) The licensee shall ensure that the elevator inspections and tests required by state and local agencies are completed.

(d) The licensee shall retain, in the facility,written certification that the installation meets applicable requirements.

(19) Mechanical Standards.

Tests shall be conducted prior to final Department construction inspection. Written test results shall be retained for facility maintenance files and available for Department review.

(20) Ventilation.

(a) All rooms and occupied areas in the facility shall have provisions for ventilation. Natural window ventilation may be used for ventilation of nonsensitive areas and patient rooms when weather conditions permit, but mechanical ventilation shall be provided during periods of temperature extremes.

(b) Bottoms of wall mounted ventilation return openings shall be located at least three inches, above the floor.

(c) Supply and return systems shall be in ducts. Common returns using corridors or attic spaces as plenums are prohibited.

(21) Plumbing.

(a) In facilities other than general hospitals, specialty hospitals, and nursing care facilities, recirculation is not required if the linear distance along the supply pipe from the water heater to the fixture does not exceed 50 feet.

(b) Rooms requiring medical gas, vacuum, and oxygen systems are listed in construction rules for each licensure category.

(22) Drainage Systems.

(a) Building sewers shall discharge into community sewerage except, where such a system is not available, the facility shall treat its sewage in accordance with local requirements and Utah Department of Environmental Quality requirements.

(b) Dishwashers, disposers and appliances shall be National Sanitation Foundation, NSF, approved and shall have the NSF seal affixed.

(23) Electrical Standards.

(a) Electrical materials shall be listed as complying with standards of Underwriters Laboratories, Inc. or other equivalent nationally recognized standards.

(b) Approaches to buildings and all spaces within the buildings occupied by people, machinery, or equipment shall have fixtures for lighting in accordance with at least mid range requirements shown in Tables 1A and 1B of the guidelines in CP 29, Lighting for Health Facilities, by the Illuminating Engineering Society of North America. Parking lots shall have fixtures for lighting to provide light levels as recommended in IES Lighting Handbook 1987, Volume 2 Applications.

(c) Cover plates on electrical receptacles connected to the emergency system shall be red.

(d) The activating device for nurse call stations shall be of a contrasting color to the adjacent floor and wall surfaces to make it easily visible in an emergency.

(e) Fuel storage capacity of the emergency generator shall permit continuous operation of the facility for 48 hours.

(f) Building electrical services required to be connected to the emergency electrical source are defined in specific rules for each licensure category.

R432-4-24. General Construction, Patient Service Facilities.

Guidelines for Construction and Equipment of Hospital and Medical Facilities 1992-1993 edition, Section 7 and Appendix A (Guidelines), are incorporated and adopted by reference and shall be met except as modified in this section. Where a modification is cited, the modification supersedes conflicting requirements of the Guidelines.

(1) Nursing Unit.

(a) Hospitals shall consist of at least one nursing unit of at least six beds containing patient rooms, patient care spaces, and service areas.

(b) When more than one nursing unit shares spaces and service areas, as permitted in this rule, the service areas shall be contiguous to each nursing unit served.

(c) Identifiable spaces shall be provided for each of the required services.

(i) When used in this rule, "room or office" describes a specific, separate, enclosed space for the service.

(ii) When "room or office" is not used, multiple services may be accommodated in one enclosed space.

(d) Facility services shall be accessible from common areas without compromising patient privacy.

(2) Patient Rooms.

(a) Patient room area is shown in each individual licensure category rule.

(b) The closets in each patient room shall be a minimum of 22 inches deep by 36 inches wide and high enough to hang full length garments and to accommodate two storage shelves.

(3) Linen Services.

(a) Processing laundry may be done within the facility, in a separate building on or off site, or in a commercial or shared laundry.

(b) If laundry is processed by an outside commercial laundry, the following shall be provided:

(i) a separate room for receiving and holding soiled linen until ready for transport.

(ii) A central, clean linen storage and issuing room(s) shall be designed to accommodate linen storage for four days operation or two normal deliveries, whichever is greater.

(iii) Handwashing facilities in each area where unbagged, soiled linen is handled.

(c) If the facility processes it's own laundry, within the facility or in a separate building, the following shall be provided:

(i) A receiving, holding, and sorting room for control and distribution of soiled linen.

(ii) A washing room with handwashing facilities and commercial equipment that can process a seven day accumulation of laundry within a regularly scheduled work week.

(iii) a drying room with dryers adequate for the quantity and type of laundry being processed;

(iv) a clean linen storage room with space and shelving adequate to store one half of all linens and personal clothing being processed.

(d) Discharge from soiled linen chutes shall be located in the receiving room or in a room separated from the washing room, drying room and clean linen storage.

(e) Prewash facilities may be provided in the receiving, holding and sorting rooms.

(f) When laundry is processed by the facility, either a two or three room configuration may be used.

(g) A two room configuration shall consist of the following:

(i) a room housing soiled linen receiving, sorting, holding, and prewash facilities; washers; and handwashing facilities.

(ii) a room housing dryers; clean linen folding, sorting, and storage facilities; and handwashing facilities.

(h) A three room configuration shall consist of:

(i) a soiled linen receiving, sorting, holding room with prewash and handwashing facilities;

(ii) a combination washer and dryer room arranged so linen flows from the soiled receiving area to the washers, to the dryers, and then to clean storage;

(iii) a clean storage room with folding, sorting, storage and handwashing facilities.

(i) Physical separation shall be maintained between rooms by means of self closing doors.

(j) Air movements shall be from the clean area to the soiled area. Air from the soiled area shall be exhausted directly to the outside.

(k) Handwashing sinks shall be provided and located within the laundry areas to maintain the functional separation of the clean and soiled processes.

(l) Rooms shall be arranged to prevent the transport of soiled laundry through clean areas and the transport of clean laundry through soiled areas.

(m) Convenient access to employee lockers and lounges shall be provided.

(n) Storage for laundry supplies shall be provided.

(o) A cart storage area for separate parking of clean and soiled linen carts shall be provided out of normal traffic paths.

R432-4-25. Excluded Sections of the Guidelines.

The following sections of the Guidelines do not apply to the construction and design requirements:

(1) Waste Processing, Section 7.27.

(2) Linen Services, Section 7.22.

KEY: health facilities

March 3, 1995 26-21-5

Notice of Continuation January 29, 1999 26-21-16

R432. Health, Health Systems Improvement, Health Facility Licensure.
R432-5. Nursing Facility Construction.
R432-5-1. Legal Authority.

This rule is promulgated pursuant to Title 26, Chapter 21.

R432-5-2. Purpose.

The purpose of this rule is to promote the health and welfare through the establishment and enforcement of construction standards.

R432-5-3. Definitions.

(1) "Room or Office" when used in this rule describes a specific, separate, enclosed space for the service. When room or office is not used, multiple services may be accommodated in one enclosed space.

(2) "Special Care Unit" means a physical area within a licensed facility designated for the housing and treatment of residents diagnosed with a specifically defined disease or medical condition.

R432-5-4. Description of Service.

(1) Nursing unit shall consist of resident rooms, resident care spaces, and services spaces.

(2) Each Nursing Unit shall contain at least four resident beds.

(3) Rooms and spaces composing a nursing unit shall be contiguous.

(4) A nursing care facility operated in conjunction with a general hospital or other licensed health care facility shall comply with all provisions of this section. Dietary, storage, pharmacy, maintenance, laundry, housekeeping, medical records, and laboratory functions may be shared by two or more facilities.

(5) Special care units shall comply with all provisions of R432-5.

R432-5-5. General Design Requirements.

R432-4-1 through R432-4-23 apply with the following modifications.

(1) Fixtures in all public and resident toilet and bathrooms shall comply with Americans with Disabilities Act Accessibility Guidelines, (ADAAG) 28 CFR 36, Appendix A, (July 1993). These rooms shall be wheelchair accessible with wheelchair turning space within the room.

(2) Turning space shall comply with ADAAG.

(3) Lavatories and counters within resident rooms shall be wheelchair accessible.

R432-5-6. General Construction Requirements.

(1) Nursing facilities shall be constructed in accordance with the Guidelines for Construction and Equipment of Hospital and Medical Facilities (Guidelines), Section 8 and Appendix A, 1992-1993 edition which is adopted by reference.

(2) Where a modification is cited, the modification supersedes conflicting requirements of the Guidelines.

R432-5-7. Nursing Unit.

(1) When more than one nursing unit shares spaces and service areas, as permitted in this rule, the shared spaces and service areas shall be contiguous to each nursing unit served.

(2) Facility service areas shall be accessible from common areas without compromising resident privacy.

(3) The nursing unit shall have a maximum number of 60 beds.

(4) At least two single-bed rooms, each with private toilet room containing a toilet, lavatory, and bathing facility shall be provided for each nursing unit.

(5) In addition to the lavatory in the toilet room, in new construction and remodeling, a lavatory or handwashing sink shall be provided in the resident room.

(6) Ventilation shall be in accordance with Table 6 with all air exhausted to the outside.

(7) Each room shall have a window in accordance with R432-4-22(7).

(8) Each resident closet shall be a minimum of 22 inches deep by 36 inches wide with a shelf to store clothing and a clothes rod positioned at 70 inches to hang full length garments.

(9) A nurse call system is not required in facilities which care for persons with mental retardation or developmental disabilities. With prior approval of the Department, a nursing facility may modify the system to alleviate hazards to residents.

(10) Handwashing facilities shall be located near the nursing station and the drug distribution station.

(11) A staff toilet room may also serve as a public toilet room if it is located in the nursing unit.

(12) A clean workroom or clean holding room with a minimum area of 80 square feet shall provide for preparing resident care items.

(a) The clean work room shall contain a counter, handwashing facilities and storage facilities.

(b) The work counter and handwashing facilities may be omitted in rooms used only for storage and holding, as part of a larger system for distribution of clean and sterile supply materials.

(13) A soiled workroom with a minimum area of 80 square feet shall be provided.

(a) The soiled workroom shall contain a clinical sink, a sink equipped for handwashing, a work counter, waste receptacles, and a linen receptacle.

(b) Handwashing sinks, clinical sinks, and work counters may be omitted in rooms used only for temporary holding of soiled, bagged material.

(14) If a medical cart is used it shall be under visual control of staff.

(a) Double locked storage shall be provided for controlled drugs.

(b) Provisions shall be made for receiving, assembling, and storage of drugs and other pharmacy products.

(15) If a closed cart is used for clean linen storage, it shall be stored in a room with a self closing door. Storage in an alcove in a corridor is prohibited.

(16) Ice intended for human consumption shall be dispensed by self dispensing ice makers. Bin type storage units are prohibited.

(17) Resident bathing facilities shall be provided in each nursing unit at a ratio of one bathing facility for each 12 beds not otherwise served by bathing facilities within individual

resident rooms.

(a) One bathtub and shower shall be provided on each nursing floor in addition to bath fixtures in resident toilet rooms.

(b) At least one shower on each floor shall be at least four feet square without curbs designed for use by a resident using a wheelchair.

(c) Each resident bathtub and shower shall be in a separate room or enclosure large enough to ensure privacy and to allow staff to assist with bathing, drying, and dressing.

(18) At least one toilet room shall be provided on each floor containing a nursing unit to be used for resident toilet training.

(a) The room shall contain a toilet and lavatory with wheelchair turning space within the room.

(b) A toilet room with direct access from the bathing area shall be provided at each central bathing area if a toilet is not otherwise provided in the bathing area. The toilet training facility may serve this function if there is direct access from the bathing area.

(c) Doors to toilet rooms shall have a minimum width of 34 inches to admit a wheelchair. The doors shall permit access from the outside in case of an emergency.

(d) A handwashing fixture shall be provided in each toilet room.

(19) An equipment storage room with a minimum area of 120 square feet for portable equipment shall be provided.

R432-5-8. Resident Support Areas.

(1) Occupational therapy service areas may be counted in the calculation of support space.

(2) Physical Therapy, personal care room, and public waiting lobbies shall not be included in the calculation of support space.

(3) There shall be resident living areas equipped with tables, reading lamps, and comfortable chairs designed to be usable by all residents.

(4) There shall be a general purpose room with a minimum area of 100 square feet equipped with a table and comfortable chairs.

(5) A minimum area of ten square feet per bed shall be provided for outdoor recreation. This space shall be provided in addition to the setbacks on street frontages required by local zoning ordinances.

(6) Examination and Treatment rooms.

(a) An examination and treatment room shall be provided except when all resident rooms are single bed rooms.

(b) An examination and treatment room may be shared by multiple nursing units.

(c) When provided, the room shall have a minimum floor area of 100 square feet, excluding space for vestibules, toilet, closets, and work counters, whether fixed or moveable.

(d) The minimum allowable floor dimension shall be ten feet.

(e) The room shall contain a lavatory equipped for handwashing, work counter, storage facilities, and a desk, counter, or shelf space for writing.

(7) In addition to facility general storage areas, at least five square feet per bed shall be provided for resident storage.

R432-5-10. Rehabilitation Therapy.

(1) A separate storage room for clean and soiled linen shall be provided contiguous to the rehabilitation therapy area.

(2) Storage for rehabilitation therapy supplies and equipment shall be provided.

R432-5-11. General Services.

(1) Linen services shall comply with R432-4-24(3).

(2) There shall be one housekeeping room for each nursing unit.

(3) Yard equipment and supply storage areas shall be located so that equipment may be moved directly to the exterior without passing through building rooms or corridors.

R432-5-12. Waste Storage and Disposal.

Facilities and equipment shall be provided for the sanitary storage and treatment or disposal of all categories of waste, including hazardous and infectious wastes if applicable, using techniques defined by the Utah Department of Environmental Quality, and the local health department having jurisdiction.

R432-5-13. Details and Finishes.

(1) Windows shall comply with R432-4-22(7).

(2) Grab bars shall be installed in all toilet rooms in accordance with the ADAAG.

(3) Corridor handrails shall comply with ADAAG.

(4) Cubicle curtains and draperies shall be affixed to permanently mounted tracks or rods. Portable curtains or visual barriers are not permitted.

(5) Signs shall be provided as follows:

(a) general and circulation direction signs in corridors;

(b) identification at each door; and

(c) emergency directional signs;

(d) all signs in corridors shall comply with ADAAG.

(6) Partitions, floor and ceiling construction in resident areas shall comply with the noise reduction criteria of Table 1 for sound control.

TABLE 1

Sound Transmission Limitations
in Long-Term Care Facilities

	Airborne Sound Transmissions Transmissions Class (STC) (a)	
Class (IIC) (b)	Partitions	Floors
(Residents') room to resident's room	35	40
Public space to (residents) room (b)	40	40
Service areas to (residents') room (c)	45	45

(a) Sound transmissions (STC) shall be determined by tests in accordance with Standard E90 and ASTM Standard E413. Where partitions do not extend to the structure above, the designer shall consider sound transmissions through ceilings and composite STC performance.

(b) Public space includes lobbies, dining rooms, recreation rooms, treatment rooms, and similar space.

(c) Service areas include kitchens, elevators, elevator machine rooms, laundry rooms, garages, maintenance rooms, boilers and mechanical equipment rooms and similar spaces of high noise. Mechanical equipment located on the same floor or above patient's rooms, offices, nurses' stations, and similarly occupied space shall be effectively isolated from the floor.

R432-5-14. Elevators.

(1) Elevators shall comply with ASMR Elevator and Escalator A17.1, 1993 edition, and ADAAG.

(2) An intercom connected to a 24-hour staffed position shall be installed in each elevator.

(3) When two or more licensed health care facilities share a physical plant, elevators may be shared if all requirements are met.

(4) The licensee shall ensure that the elevator inspections and tests required by state and local agencies are completed and shall retain, in the facility, written certification that the installation meets applicable requirements.

R432-5-15. Mechanical Standards.

(1) Mechanical tests shall be conducted prior to final Department construction inspection.

(2) Written test results shall be retained in facility maintenance files and available for Department review.

(3) Insulation containing any asbestos is prohibited.

(4) Air Conditioning, Heating, and Ventilating Systems shall include:

(a) A heating system capable of maintaining a temperature of 80 degrees Fahrenheit in areas occupied by residents.

(b) A cooling system capable of maintaining a temperature of 72 degrees Fahrenheit in areas occupied by residents.

(c) Evaporative coolers may not be used.

(d) Isolation rooms may be ventilated by reheat induction units in which only the primary air supplied from a central system passes through the reheat unit. No air shall be recirculated into the building system.

(e) Supply and return systems must be within a duct. Common returns using corridor or attic spaces as return plenums are prohibited.

(f) Filtration shall be provided when mechanically circulated outside air is used.

(g) Dampers and Fans.

(i) Fans and dampers shall be interconnected so that activation of dampers shall automatically shut down fans.

(ii) Smoke dampers shall be equipped with remote control reset devices. Manual reopening is permitted where dampers are located for convenient access.

(h) Hoods.

(i) All hoods over cooking ranges shall be equipped with grease filters, fire extinguishing systems, and heat activated fan controls.

(ii) Cleanout openings shall be provided every 20 feet in horizontal sections of duct systems serving the hoods.

(i) Air from areas with contamination or odor problems, such as toilet areas, clinical sinks, smoking rooms, isolation rooms, soiled linen rooms, and housekeeping closets shall be exhausted to the outside and not recirculated to other areas.

(j) Gravity exhaust may be used, where conditions permit, for boiler rooms, central storage, and other nonresident areas.

(5) Plumbing and other Piping Systems shall include:

(a) Handwashing facilities that are arranged to provide sufficient clearance for single lever operating handles.

(b) Fixtures in resident use areas equipped with cross or tee handles or single lever operating handles.

(c) Dishwashers, disposal and appliances that are National Sanitation Foundation (NSF) approved and have the NSF seal affixed.

(d) Kitchen grease traps that are located and arranged to permit access without the need to enter food preparation or storage areas.

(e) Hot water provided in patient tubs, showers, whirlpools, and handwashing facilities that is regulated by thermostatically controlled automatic mixing valves. These valves may be installed on the recirculating system or on individual inlets to appliances.

(f) All piping and valves in all systems, except control line tubing, shall be labeled to show content of line and direction of flow.

(i) Labels shall be permanent, either metal or paint.

(ii) Labels shall be clearly visible to personnel.

R432-5-16. Electric Standards.

(1) Operators shall maintain written certification to the Department verifying that systems and grounding comply with NFPA 99 and NFPA 70.

(2) Approaches to buildings and all spaces within buildings occupied by people, machinery, or equipment shall have fixtures for lighting in accordance with the requirements of the Illuminating Engineering Society of North America (IESNA) and with the Guidelines Table 9. Parking lots shall have fixtures for lighting to provide light levels as recommended in IES Lighting Handbook 1987, Volume 2, Applications by Illuminating Engineering Society of North America.

(3) Automatic emergency lighting shall be provided in accordance with NFPA 99 and NFPA 101.

(4) Each examination and work table shall have access to a minimum of two duplex outlets. Receptacle cover plates on the emergency system shall be red.

(5) An on-site emergency generator shall be provided in all nursing care facilities except small ICF/MR health care facilities of 16 beds or less.

(a) The following services shall be connected to the emergency generator:

(i) life safety branch, as defined in section 517-32 of the National Electric Code NFPA 70;

(ii) equipment system, as defined in 517-34 of the National Electric Code NFPA 70;

(iii) telephone;

(iv) nurse call system;

(v) medicine preparation system;

(vi) lighting at nurses station;

(vii) heating equipment necessary to provide heated space to house all residents under emergency conditions;

(viii) one duplex convenience outlet at each nurse station;

(ix) duplex convenience outlets in the emergency heated area at a ratio of one for each ten residents.

(b) Fuel storage shall permit continuous operation of the services required to be connected to the emergency generator for 48 hours.

R432-5-17. Exclusions to the Guidelines.

The following sections of the Guidelines do not apply:

(1) Parking, Section 8.1.F.

(2) Program of Functions, Section 8.1.G.
(3) Clean Utility Room, Subsection 8.2.C.5.
(4) Windows, Subsection 8.2.B3. and 8.8.A4.
(5) Soiled Utility Rooms, Subsection 8.2.C6.
(6) Resident Bathing Facilities, Subsection 8.2.C11.
(7) Resident Toilet Facilities, Section 8.2.D and Subsection 8.4.A2.
(8) Linen Services, section 8.6.E.
(9) Waste Storage and Disposal, section 8.7.

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R432. Health, Health Systems Improvement, Health Facility Licensure.

R432-6. Assisted Living Facility General Construction.

R432-6-1. Legal Authority.

This rule is promulgated pursuant to Title 26, Chapter 21. Sections numbered less than R432-6-99 apply to all assisted living facilities. Sections in the R432-6-100 series apply to Type I assisted living facilities. Sections in the R432-6-200 series apply to Type II assisted living facilities.

R432-6-2. Purpose.

The purpose of this rule is to promote the health and welfare of individuals receiving assisted living services through the establishment and enforcement of construction standards.

R432-6-3. Definitions.

(1) Assisted Living Facility Type I is a residential facility that provides assistance with activities of daily living and social care to two or more ambulatory residents who require protected living arrangements.

(2) Assisted Living Facility Type II is a residential facility that provides coordinated supportive personal and health care services to two or more semi-independent residents.

(a) "Semi-independent means a person who is:

(i) physically disabled but able to direct his or her own care; or

(ii) cognitively impaired or physically disabled but able to evacuate from the facility, or to a zone or area of safety, with the physical assistance of one person.

(b) "Resident Living Unit" means:

(i) a one bedroom unit which may also include a bathroom and additional living space; or

(ii) a two bedroom unit which may also include a bathroom and additional living space.

(c) "Additional Living Space" means a living room, dining area and kitchen, or a combination of these rooms or areas in a resident living unit.

(3) "Room" or "office" means a specific, separate, fully enclosed space for the service. If "room" or "office" is not used, multiple services may be accommodated in one enclosed space.

(4) Assisted Living Facilities Type I and Type II may be classified as either large, small or limited capacity.

(a) A large assisted living facility houses 17 or more residents.

(b) A small assisted living facility houses six to 16 residents.

(c) A limited capacity assisted living facility houses up to five residents.

R432-6-4. General Requirements.

(1) The licensee is responsible for assuring compliance with R432-6.

(2) If testing and certification compliance can only be verified through written documentation, the documentation shall be maintained in the facility for Department inspection.

(3) If conflicts exist between applicable codes or if other authorities having jurisdiction adopt more restrictive requirements than contained in these rules, the most restrictive requirement applies.

(4) If the Department has concerns about compliance, the licensee is responsible to demonstrate compliance.

R432-6-5. Codes and Code Compliance.

(1) The following codes and standards enforced by other agencies or jurisdictions apply to assisted living facilities. The licensee shall obtain documentation of compliance for the following codes and standards from the authority having jurisdiction and submit the documentation to the Department:

(a) Local zoning ordinances;

(b) Uniform Building Code;

(c) Uniform Plumbing Code;

(d) Uniform Fire Code;

(e) ASME Elevator and Escalator A17.1; and

(f) Americans with Disabilities Act Accessibility Guidelines, (ADAAG) 28 CFR 36, Appendix A (July 1993).

(2) The licensee shall obtain a certificate of occupancy from the local building official having jurisdiction.

(3) The licensee shall obtain a certificate of fire clearance from the Fire Marshal having jurisdiction.

(4) The licensee shall submit a copy of the certificates to the Department prior to resident utilization of newly constructed facilities, additions or remodels of existing facilities.

R432-6-6. Application of Codes for New and Existing Buildings.

(1) New construction, additions and remodels to existing buildings shall comply with Department rules in effect on the date the first drawings are received by the Department.

(2) If the remodeled area in any building, wing, floor or service area of a building exceeds 50 percent of the total square foot area of the building, wing, floor or service area, then the entire building, wing, floor or service area shall be brought into compliance with rules governing new construction which are in effect on the date the first drawings are submitted to the Department.

(3) During remodeling, new construction or additions, the safety level which existed prior to the start of work shall be maintained.

(4) Current licensed buildings shall conform to Department construction rules in effect at the time of initial facility licensure.

(5) Buildings which are changing license classification shall comply with requirements for new construction.

(6) Buildings undergoing refurbishing shall comply with the following:

(a) All materials installed as part of a refurbishing project shall comply with flame spread ratings required by the fire marshal having jurisdiction.

(b) The facility shall keep written documentation of compliance with codes and standards.

R432-6-7. Plans Review and Approval and Construction Inspection.

(1) Health facilities shall obtain Department approval before occupying any newly constructed buildings or remodeled systems, or areas in existing buildings.

(2) Prior to submitting documents for plans review, the facility architect and licensee must schedule a conference with

Department representatives to outline the required plans review process.

(3) The licensee shall submit the following for Department review:

(a) a functional program;

(b) schematic drawings;

(c) design development drawings; and

(d) working drawings, including specifications.

(4) The Department shall initiate its review when it receives all required documents and fees.

(5) Working drawings and specifications for new construction, additions, or remodeling shall have the seal of a Utah licensed architect affixed in compliance with Section 58-3a-602.

(6) Plans approved by the Department do not relieve the licensee of responsibility for full compliance with R432-6.

(7) Plan approval expires 12 months after the date of the Department's approval letter, or latest plan review response letter if construction has not commenced. After a 12 month lapse the licensee must resubmit plans to the Department with a new plan review paid. A new letter of approval must be obtained from the Department.

(8) The Department shall issue an initial license, renewal license, or modified license only after the Department has determined the facility conforms with applicable licensure construction rules and has obtained all required clearances and certifications.

R432-6-8. Functional Program.

(1) The licensee must furnish to the Department a functional program which includes the following:

(a) the purpose and license category of the facility;

(b) services offered, including a detailed description of each service;

(c) ancillary services required to support each function or program;

(d) services offered under contract by outside providers and the required in-house facilities to support these services;

(e) services shared with other health care licensure categories or functions;

(f) physical and mental condition of intended residents;

(g) ambulatory condition of intended residents, such as mobile or ambulatory;

(h) special electrical requirements related to resident care; and

(i) communication systems and other special systems.

(2) The functional program must include a description of how essential core services will accommodate increased demand if the building is designed for later expansion.

R432-6-9. Drawings.

(1) Drawings shall show all equipment necessary for the operation of the facility, such as kitchen equipment, laundry equipment, and similar equipment.

(2) Schematic drawings, which may be single line, shall contain the following information:

(a) list of applicable building codes;

(b) location of the building on the site and access to the building for public, emergency, and service vehicles;

(c) site drainage and any natural drainage channels which traverse the site;

(d) any unusual site conditions, including easements which might affect the building or its appurtenances;

(e) relationships of rooms and areas within departments;

(f) number of resident beds; and

(g) total building area or area of additions or remodeled portions.

(3) Design development drawings, drawn to scale, shall contain the following information:

(a) room dimensions and room square footage;

(b) site plan, showing relationship to streets and vehicle access;

(c) location and size of public utilities; and

(d) types of mechanical, electrical and auxiliary systems.

(4) Working drawings shall include all the drawings outlined above in R432-6-9(1) through (3).

(a) The licensee shall provide one copy of completed working drawings and specifications which shows all equipment necessary for the operation of the facility such as kitchen, laundry, and other equipment.

(b) The Bureau of Licensing will keep the final drawings for 12 months after final approval of the project. Drawings may then be returned to the owner upon request.

(5) Within 30 days after receipt of required documentation and fee, the Department shall provide to the licensee and the project architect a written report of plans review outlining necessary modifications required to comply with Department rules.

(6) If changes are necessary, the licensee shall submit revised plans for review and final approval.

R432-6-10. Construction Inspections.

(1) The Department may conduct interim inspections.

(2) Prior to resident utilization, the licensee shall schedule a final inspection with the Department when the project is complete and furnishings and equipment are in place.

R432-6-11. Construction Without Plans Approval.

(1) If construction is commenced without prior Department plans approval, the Department may issue a license and authorize resident utilization only after it has approved as-built drawings and has conducted a construction inspection.

(2) The licensee shall correct all non-compliant items and pay the full plans review fee and inspection fee.

R432-6-12. Buildings Without Plans.

(1) If plans are not available for existing buildings involved in initial licensing or license category change, the licensee shall submit to the Department a functional program as defined in subsection R432-6-8, and a report identifying modifications to the building required to bring it into compliance with construction rules for the requested licensure category.

(2) The Department shall review the functional program and furnish to the licensee a letter of approval or rejection within 30 days after receipt of the material. The Department may provide, at its option, a written report of modifications required to comply with construction standards.

(3) The licensee shall request and schedule a Department inspection upon completion of the modifications.

(4) Prior to a final Department inspection, the licensee shall pay the inspection fee.

(5) The Department shall issue a license when the building is in compliance with all licensing rules.

R432-6-13. Construction Phasing.

Projects involving remodeling or additions to an occupied building shall be programmed and phased to minimize detrimental effects to and disruption of residents and employees of the facility by protecting against construction traffic, dust, and dirt from the construction site.

R432-6-14. Site Location.

(1) The site shall be accessible to both visitor and service vehicles.

(2) Facilities shall be located to ensure that public utilities are available.

R432-6-15. Site Design.

The site design shall include the following:

(1) Surrounding land for outdoor activities;

(2) Paved roads for access to service docks and entrances;

(3) Fire equipment access as required by the fire marshal; and

(4) Paved walkways for pedestrian traffic and from every required exit to a dedicated public way.

R432-6-16. Parking.

(1) Parking requirements must comply with local zoning ordinances.

(2) Parking spaces for persons with disabilities shall be as level as practical and conform to requirements for disabled parking access as required by ADAAG.

(a) The extra width required for disabled parking may be used as part of a common walkway.

(b) Parking spaces for the disabled shall be directly accessible to the facility without requiring the disabled to go behind parked cars.

R432-6-17. Elevators.

All large multi-level assisted living facilities shall have an elevator which serves all levels. At least one elevator serving all levels shall accommodate a gurney with attendant and have minimum inside cab dimensions of 5'8" wide by 8'5" deep and a minimum clear door width of 3'8".

R432-6-18. Special Design Features.

(1) Building entrances in large facilities shall be at grade level, clearly marked, and located to minimize the need for residents to traverse other program areas. A main facility entrance shall be designated and accessible to persons with disabilities.

(2) Lobbies of multi-occupancy buildings may be shared if the design precludes unrelated traffic within or through units or suites of the licensed health care facility.

(3) At least one building entrance shall be accessible to persons with physical disabilities. Entrances requiring ramps with a slope in excess of 1:20 shall have steps as well as ramps.

(4) In Large facilities where all resident units do not have kitchens or toilet facilities, at least one drinking fountain or water cooler, toilet, and handwashing fixture on each floor shall be wheelchair accessible.

(5) Each resident living unit shall have a wardrobe, closet, or locker for each resident occupying the unit. The closet, wardrobe or locker shall have a shelf and a hanging rod, with minimum inside dimensions of 22 inches deep by 36 inches wide by 72 inches tall, suitable for hanging full-length garments.

R432-6-19. General Standards for Details.

(1) Placement of drinking fountains, telephone booths, or vending machines shall not restrict corridor traffic or reduce required corridor width.

(2) Doors and windows shall comply with the following requirements:

(a) Rooms which contain bathtubs, showers, or water closets for resident use shall be equipped with doors and hardware which permit emergency access.

(b) Doors, except those to spaces such as small closets not subject to occupancy, shall not swing into corridors in a manner which will obstruct traffic or reduce corridor width. Large walk-in type closets are occupiable spaces.

(c) Windows which open to the exterior shall be equipped with insect screens.

(d) Resident rooms and suites intended for 24-hour occupancy shall have operable windows which open to the exterior of the building or to a court open to the sky.

(e) Doors, sidelights, borrowed lights, and windows glazed to within 18 inches of the floor shall be constructed of safety glass, wired glass, or plastic break-resistant material that creates no dangerous cutting edges when broken.

(f) Safety glass, wired glass, or plastic break-resistant materials shall be used for wall openings in recreation rooms, exercise rooms, and other activity areas unless prohibited in the Uniform Building Code.

(g) Doors used for shower and bath enclosures shall be made of safety glass or plastic glazing materials.

(3) Trash chutes, laundry chutes, dumbwaiters, elevator shafts, and other similar systems shall not allow movement of contaminated air into clean areas.

(4) Thresholds and expansion joint covers shall be flush with the floor surface to facilitate use of wheelchairs and carts.

(5) All lavatories must be equipped with hand drying facilities.

(a) Lavatories that are expected to serve more than one resident shall have single use paper towel dispensing units or cloth towel dispensing units that are enclosed to protect towels from being soiled. Double occupancy units are not required to provide towel dispensing units if occupied by two related persons.

(b) Lavatories shall be anchored to withstand an applied vertical load of not less than 250 pounds on the fixture front.

R432-6-20. General Standards for Finishes.

(1) Curtains and draperies shall be affixed to permanently mounted tracks or rods.

(2) Floors and walls shall be designed and constructed as

follows:

(a) Floor materials shall be easily cleanable;

(b) Floors in areas used for food preparation or food assembly shall be water-resistant. Floor surfaces, including tile joints, shall be resistant to food acids.

(c) In areas subject to frequent wet-cleaning, floor materials shall not be physically affected by germicidal cleaning solutions.

(d) Floors in shower and bath areas, kitchens, and similar work areas subject to traffic while wet shall have non slip surfaces.

(e) Floors and wall bases of kitchens, toilet rooms, bath rooms, janitors' closets, and other areas subject to frequent wet cleaning shall be homogeneous with coved bases and tightly sealed seams.

(f) Wall finishes shall be washable and, in the immediate vicinity of plumbing fixtures, smooth and moisture-resistant.

(g) Finish, trim, floor, and wall construction in dietary and food preparation areas shall be free of insect and rodent harboring spaces.

(h) Floor and wall openings for pipes, ducts, conduits, and joints of structural elements shall be tightly sealed to resist passage of fire and smoke and minimize entry of pests.

(i) Carpet and padding shall be stretched taut and be free of loose edges.

(j) Carpet pile shall be sufficiently dense so as not to interfere with the operation of wheel chairs, walkers, wheeled carts, and other wheeled equipment.

(k) Carpet and other floor coverings shall comply with provisions of ADAAG.

(3) Ceiling finishes shall be designed and constructed as follows:

(a) Finishes of all exposed ceilings and ceiling structures in resident rooms and staff work areas shall be readily cleanable with routine housekeeping equipment.

(b) In large facilities, acoustical treatment for sound control shall be provided in areas where sound control is needed, including corridors in resident areas, dayrooms, recreation rooms, dining areas, and waiting areas.

(c) Finished ceilings may be omitted in mechanical and equipment spaces, shops, general storage areas, and similar spaces unless required for fire resistive purposes.

(4) The following signs shall be provided:

(a) general and circulation direction signs in corridors of large assisted living facilities;

(b) emergency evacuation directional signs for all facilities; and

(c) room identification signs on the corridor side of all corridor doors.

R432-6-21. Building Systems.

(1) Facilities and equipment shall be provided for the sanitary storage and treatment or disposal of all categories of waste, including hazardous and infectious wastes if applicable, using techniques acceptable to the State Department of Environmental Quality, and the local health department having jurisdiction.

(2) The following engineering service and equipment shall be provided for effective service and maintenance functions:

(a) rooms for mechanical equipment or electrical equipment;

(b) a storage room for building maintenance supplies;

(c) yard equipment and supply storage areas located so that equipment may be moved directly to the exterior of the building without passing through building rooms or corridors;

(d) central storage for supplies, equipment and miscellaneous storage in large and small facilities; and

(e) in large facilities, a separate maintenance room or office.

(3) In large facilities a housekeeping room shall be located on each floor of the assisted living facility. This room shall have a floor receptor or service sink. All housekeeping rooms shall be mechanically exhausted.

(4) Sound Control for large assisted living facilities must be designed and constructed to meet the noise reduction criteria as outlined in Table 1.

TABLE 1
Sound Transmission Limitations

	Airborne Sound Transmissions Class	
	Partitions	Floors
Residents' room to residents' room	35	40
Public space to residents' room	40	40
Service areas to residents' room	45	45

(a) Sound transmission class shall be determined by tests in accordance with methods set forth in ASTM Standard E 90 and ASTM Standard E 413. Where partitions do not extend to the structure above, sound transmission through ceilings and composite STC performance must be considered.

(b) Public space includes lobbies, dining rooms, recreation rooms, treatment rooms, and similar space.

(c) Service areas include kitchens, elevators, elevator machine rooms, laundries, garages, maintenance rooms, boilers and mechanical equipment rooms, and similar spaces of high noise. Mechanical equipment located on the same floor or above resident's rooms, offices, and similarly occupied space shall be effectively isolated from the floor.

(d) Recreation rooms, exercise rooms, equipment rooms and similar spaces where impact noises may be generated may not be located directly over residents' rooms.

R432-6-22. Mechanical, Heating, Cooling and Ventilation Systems.

(1) The HVAC system design shall prevent large temperature differentials, high velocity supply, excessive noise, and air stagnation.

(2) Air supply and exhaust in rooms for which no minimum total air change rate is mandated by Table 2 may vary to zero in response to room load.

(3) Mechanical ventilation shall be provided for interior spaces independent of thermostat-controlled demands.

(a) Minimum total air change, room temperature, and temperature control shall comply with standards in Table 2.

(b) To maintain asepsis and odor control, airflow supply and exhaust shall be controlled to ensure movement of air from clean to less clean areas.

(c) Rooms containing heat-producing equipment shall be

insulated and ventilated to prevent the floor surface above or the walls of adjacent occupied areas from exceeding a temperature of ten degrees Fahrenheit above ambient room temperature.

(d) All rooms and occupiable areas in the facility shall have provisions for ventilation. Natural window ventilation may be used for ventilation of nonsensitive areas and resident rooms when weather conditions permit, but mechanical ventilation shall be provided during periods of temperature extremes.

(e) The heating system shall be capable of maintaining temperatures of 80 degrees F. in areas occupied by residents.

(f) The cooling system shall be capable of maintaining temperatures of 72 degrees F. in areas occupied by residents.

(g) Equipment must be available to provide essential heating during a loss of normal heating capability. All emergency heating devices shall be approved by the local fire jurisdiction.

(h) Fans serving exhaust systems shall be located at the discharge end and shall be readily serviceable. Exhaust fans may be on the inlet side if individually ducted directly to the outside.

(i) Fresh air intakes shall be located to prevent fumes from exhaust outlets of ventilating systems, combustion equipment stacks, plumbing vents, or areas subject to vehicular exhaust or other noxious fumes from entering the building.

(j) All ventilation, air conditioning systems and air delivery equipment, including through wall units, shall be equipped with filters in accordance with Table 3.

(k) Gravity exhaust may be used where conditions permit for boiler rooms, central storage, and other nonresident areas.

(l) The ventilation system shall be air tested and balanced prior to the final Department construction inspection. The initial test results and air balancing report shall be maintained for Department review.

TABLE 2
Ventilation Requirements

AREA DESIGNATION	AIR MOVEMENT IN RELATION TO ADJACENT AREAS	MINIMUM AIR CHANGES OF OUTDOOR AIR PER HOUR TO ROOM	MINIMUM TOTAL AIR CHANGES PER HOUR	ALL AIR EXHAUSTED OUTSIDE
Bath and Shower Rooms	N	Optional	10	YES
Clean Linen Storage	P	Optional	2	Optional
Dietary Day Storage	V	Optional	2	Optional
Food Preparation Center	E	2	10	YES
Janitors' Closets	N	Optional	10	YES
Laundry	V	2	10	YES
Corridor	E	Optional	2	Optional
Grooming Area	N	2	2	YES
Resident Room	E	Greater	2	Optional of one air change or minimum 20 CFM/ person
Soiled Linen Sorting and Storage	N	Optional	10	YES
Toilet Rooms	N	Optional	10	YES
Ware Washing	N	Optional	10	YES
Common Areas	E	2	2	Optional

E = Equal; N = Negative; P = Positive; V = Variable

(m) The requirements of Table 2 do not apply to limited capacity facilities. Limited capacity facilities shall provide exhaust for kitchens and bathrooms.

(n) If an existing building bathroom or toilet room is not exhausted to the outside, the licensee may submit a Request for Agency Action Variance to the Table 2 requirements at the time of initial licensing.

(4) All areas for resident care, and those areas providing direct service or clean supplies shall provide at least one filter bed with a minimum of 30% efficiency.

(5) All administrative, bulk storage, soiled holding, food preparation and laundries shall provide at least one filter bed with a minimum of 25% efficiency.

R432-6-23. Plumbing.

(1) Showers and tubs shall have non-slip or slip-resistant surfaces.

(2) Potable water supply systems shall comply with the following requirements:

(a) Water supply systems shall be designed with sufficient pressure to operate all fixtures and equipment during maximum demand.

(b) Each water service main, branch main, riser, and branch to a group of fixtures shall have a stop valve. A stop valve shall be provided for each fixture. Panels shall be provided for access to valves.

(c) All fixtures used by residents shall be trimmed with valves with cross, tee or single lever handles.

(3) Hot water systems shall meet the following requirements:

(a) As a minimum, water-heating systems shall provide supply capacity at temperatures and amounts indicated in Table 3. Water temperature shall be measured at the point of use or inlet to equipment.

TABLE 3
Hot Water Use

Resident Care Areas	Dietary	Laundry

Gallons per Hour per Bed	3	2	2
Temperature Centigrade	43	49	71
Temperature Fahrenheit	110	120	160

(b) Distribution systems that exceed 50 linear feet and that service resident care areas shall be under constant recirculation to provide continuous hot water to each outlet. The temperature of hot water for lavatories, showers and bathing shall not exceed 120 degrees Fahrenheit. Thermostatically controlled automatic mixing valves may be used to maintain hot water at these temperatures.

(c) 180 degrees Fahrenheit rinse water must be provided at the dishwasher if an approved low temperature chemical rinse is not utilized.

(d) 160 degrees Fahrenheit hot water must be available at the laundry equipment as needed.

(4) Quantities indicated for design demand of hot water are for general reference minimums and shall not substitute for accepted engineering design procedures using actual number and types of fixtures to be installed.

(5) Drainage system shall comply with the following requirements:

(a) Building sewers shall discharge into community sewerage. Where such a system is not available, the facility shall treat its sewage in accordance with local requirements and State Department of Environmental Quality requirements.

(b) Where overhead drain piping is exposed, special provisions shall be made to protect the space below from contamination from leakage, condensation, and dust particles. Approval of special provisions in food preparation, food service areas, and food storage areas shall be obtained from the local health department.

(c) Kitchen grease trap locations shall comply with local health department rules.

(6) Dishwashers, in sink garbage disposers, and other appliances shall be National Sanitation Foundation, NSF, approved and have the NSF seal affixed.

R432-6-24. Electrical.

(1) In large assisted living facilities, panel boards serving normal lighting and appliance circuits shall be located on the same floor or on the same wing as the circuits served. Panels for emergency circuits, if provided, may serve the floors above and below for general resident areas and administration.

(2) Corridors shall be illuminated at night in accordance with Table 4.

(3) Light intensity shall be at or above the minimum foot-candle in accordance with Table 4. Areas not shown in Table 4, including parking lots and approaches to the building, shall have fixtures to provide light levels as recommended in IES Lighting Handbook, RP-29-95, Lighting for Hospitals and Health Care Facilities by the Engineering Society of North America which is adopted and incorporated by reference.

TABLE 4
Assisted Living Facilities Lighting Standards

Physical Plant Area	Minimum Foot-candle
Corridors	
Day	15
Night	7.5
Exits	15
Stairways	15
Res. Room	
General	7.5
Reading/Mattress Level	30
Toilet area	30
Lounge	
General	7.5
Reading	30
Recreation	30
Dining	20
Dining and Recreation	30
Laundry	30

(4) Each resident room shall have a duplex grounded receptacle on every wall.

(5) Duplex grounded receptacles for general use shall be installed no more than 50 feet apart in corridors, on either side, and within 25 feet of corridor ends.

(6) A night light shall be provided in each resident bedroom and bathroom.

R432-6-25. Food Service.

(1) Food service facilities and equipment shall comply with R392-100, the Utah Department of Health Food Service Sanitation Rules.

(2) Food service space and equipment shall be provided as follows:

(a) storage area for food supplies, including a cold storage area, for a seven-day supply of staple foods and a three-day supply of perishable foods;

(b) food preparation area;

(c) an area to serve and distribute resident meals;

(d) an area for receiving, scraping, sorting, and washing soiled dishes and tableware;

(e) a storage area for waste which is located next to an outside facility exit for direct pickup; and

(f) a space for meal planning.

R432-6-100. Type I Facilities.

The following sections in the 100 series apply to Type I assisted living facilities.

R432-6-101. Occupancy Type.

(1) Large assisted living facilities shall comply with I-2, Uniform Building Code, requirements.

(2) Small assisted living facilities shall comply with R-4, Uniform Building Code, requirements.

(3) Limited capacity assisted living facilities shall comply with R-3, Uniform Building Code, requirements.

R432-6-102. Common Areas.

(1) A common room or rooms shall be provided for dining, sitting, visiting, recreation, worship, and other activities.

(a) Common rooms shall have sufficient space and separation to promote and facilitate the activity without interfering with concurrent activities or functions in the building.

(i) In a small facility the common rooms shall be at least 28 square feet per bed, but no less than a total of 225 square feet.

(ii) In a large facility the common rooms shall be at least 30 square feet per bed. In a facility with 100 beds or more, the

common rooms minimum square footage per bed may be reduced to 25.

(b) Space shall be provided for necessary equipment and storage of recreational equipment and supplies.

R43-6-103. Resident Units.

(1) Minimum room areas, exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, and vestibules, shall be 100 square feet in single-bed rooms and 80 square feet per bed in multiple-bed rooms.

(a) The areas noted above are minimums and do not prohibit larger rooms.

(b) Resident units may not have more than two beds per unit

(2) No room used for other purposes, such as a hall, corridor, unfinished attic, garage, storage area, shed, or similar detached building, may be used as a residents' sleeping room.

(3) No bedroom may be used as a passageway to another room, bath, or toilet other than those serving the bedroom.

(4) Bedrooms shall open directly into a corridor or common living area, but shall not open into a food preparation area.

(5) Unless furnished by the resident, the licensee shall provide for each resident a bed, comfortable chair, a chest of drawers and a reading lamp.

R432-6-104. Toilet and Bathing Facilities.

(1) Residents shall have privacy in toilet and bathrooms. Toilet and bathrooms shall be conveniently located.

(2) Resident toilet, bathtub, shower rooms, and facilities designed for use by the disabled shall comply with ADAAG.

(3) Grab bars shall be provided in all resident bathtubs and showers as required by ADAAG. At least one grab bar, which complies with ADAAG, shall be provided at the side of each resident toilet facility.

(4) Bars, including those which are an integral part of soap dishes, towel bars, and other fixtures shall be anchored to sustain a concentrated load of 250 pounds.

(5) There shall be one toilet and lavatory on each floor for each six occupants not otherwise served by toilet and lavatory in the resident rooms. A large type I assisted living facility shall have separate and additional toilet and bathing facilities for live-in family and staff.

(6) There shall be at least one bathtub or shower for each 10 residents not otherwise served by bathing facilities in resident rooms. Separate and additional facilities shall be provided for live-in family and staff. In a multistory building, there shall be at least one bathtub or shower which opens from the corridor on each floor that contains resident bedrooms not otherwise served.

(7) Each central bathroom shall have a toilet and lavatory.

(8) Toilet and bathing facilities shall not open directly into food preparation areas.

(9) All toilet, shower, and tub facilities shall have impermeable walls and surfaces that can be easily cleaned and sanitized.

(10) Showers and bathrooms shall contain recessed soap dishes.

(11) Each lavatory fixture shall have a mirror, except in food preparation areas.

R432-6-105. Service Areas.

There shall be adequate space and equipment for the following service or functions.

(1) Large assisted living facilities must provide the following:

(a) an administrator's office with equipment for keeping records and supplies;

(b) an employee toilet room, lockers, and lounges, in addition to and separate from those required for the public;

(c) a public reception or information area; and

(d) housekeeping closets each with a floor receptor or service sink.

(2) The following required spaces apply to all type I assisted living facilities:

(a) A secure area for administrative activities and storage for resident records;

(b) a medication-storage area including a locked drug cabinet;

(c) a closet or compartment for the staff's personal effects;

(d) a clean linen storage area;

(e) a telephone for private use by residents or visitors;

(f) at least one general use housekeeping closet accessible from a general corridor on each wing or each floor; and

(g) storage space for housekeeping equipment and supplies with a mechanical exhaust system.

R432-6-106. Linen Services.

(1) Each facility shall have space and equipment to store and process clean and soiled linen as required for resident care. Laundry may be done within the facility, in a separate building, on or off site, or in a commercial or shared laundry.

(2) At least one washing machine, one clothes dryer, and ironing equipment in good working order shall be available for use by residents who wish to do their personal laundry.

R432-6-107. Signal System.

(1) A signal system is required for the following facilities:

(a) a large facility;

(b) a facility with bedrooms on more than one floor; and

(c) when staff are not continuously present on the same level as any resident.

(2) The signal system shall be designed to:

(a) operate from each resident's living unit, and from each bathroom or toilet room;

(b) transmit a visual or auditory signal or both to a centrally staffed location, or produce an auditory signal at the living unit loud enough to summon staff; and

(c) identify the location of the resident summoning help.

R432-6-200. Type II Facilities.

The following sections in the 200 series apply to Type II assisted living facilities.

R432-6-201. Occupancy Type.

(1) Large and small assisted living facilities shall comply with I-2, Uniform Building Code, requirements and shall have, at a minimum, six-foot wide corridors.

(2) Limited capacity assisted living facilities that house Type II assisted living residents shall comply with R-4, Uniform Building Code requirements and shall either have an approved sprinkler system, or provide a staff to resident ratio of one to one on a 24-hour basis. Residents shall be housed on floors at grade level.

(3) Multiple level assisted living facilities shall provide smoke compartmentation on all levels above the first floor. Each compartment shall have space to accommodate all occupants of that floor.

R432-6-202. Campus-Type Facilities.

(1) If a campus-type facility has separate buildings, all of the buildings shall be located on the same site within 150 feet of each other.

(2) Resident living units shall be connected to bathing facilities and common areas by enclosed temperature controlled corridors.

(3) Recreation and dining spaces that are also utilized by residents of other licensed health care facilities within the same campus may be counted in determining common area space as long as all applicable code and space requirements are met for all licensed facilities and the shared space is accessible without the need to pass through corridors or resident care areas of another licensed facility. The shared space may not account for more than fifty percent of the total common square footage required for any one licensed facility.

R432-6-203. Resident Units.

(1) Facility services shall be accessible from common areas without compromising resident privacy.

(2) Resident living units shall include room areas exclusive of space for toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules as follows:

(a) A single occupant unit without additional living space shall be a minimum of 120 square feet.

(b) A double occupant unit without additional living space shall be a minimum of 200 square feet.

(c) A single occupant bedroom in a unit with additional living space shall be a minimum of 100 square feet.

(d) A double occupant bedroom in a unit with additional living space shall be a minimum of 160 square feet.

(3) No space used for other purposes, such as a hall, corridor, unfinished attic, garage, storage area, shed, or similar detached building, may be used as a resident's bedroom.

(4) Bedrooms may not be used as a passageway to another room, bath, or toilet other than those serving the bedroom.

(5) Each resident living unit shall open directly into a corridor or common living area, but must not open into a food preparation area.

(6) A maximum of two residents may occupy a resident living unit.

R432-6-204. Toilet and Bathing Facilities.

(1) If toilet and bathrooms are shared by more than one resident, the facility shall provide individual privacy.

(2) A minimum of fifty percent of all toilet rooms, bathrooms and shower rooms shall be designed in compliance with ADAAG.

(3) Public toilet rooms shall be accessible from a corridor, and shall comply with ADAAG.

(4) If the living unit includes a private bathroom, the bathroom shall contain a toilet and a lavatory.

(5) If resident living units do not have a private bathroom, the facility shall provide the following:

(a) a toilet and lavatory for every four residents;

(b) a bathtub or shower for every 10 residents designed to accommodate a resident in a wheelchair and space to allow staff to assist a resident in taking a shower; and

(c) a bathroom with bathtub or shower, toilet and lavatory which open from a corridor on each floor of a multiple story facility.

(6) If resident living units have private bathrooms that do not allow staff assistance, then each floor or level shall provide a bathroom equipped with a bathtub or shower, toilet, and lavatory which opens from a corridor that provides wheelchair clearances and allows for staff assistance in bathing.

(7) Grab bars shall be provided in all resident bathtubs and showers as required by ADAAG. At least one grab bar, which complies with ADAAG, shall be provided at the side of each resident toilet facility not designed for accessibility.

(8) Toilet and bathing facilities may not open directly into food preparation areas.

(9) All toilet, shower, and tub facilities shall have impermeable walls and surfaces that may be easily cleaned and sanitized.

(10) Showers and tubs shall contain recessed soap dishes.

(11) Each lavatory fixture shall have a mirror. Mirrors over lavatories located in food preparation areas are prohibited.

(12) All lavatories shall have hand drying facilities.

(a) If lavatories are used by more than one individual, enclosed, single use paper towel dispensing units or cloth towel dispensing units or hot air drying units shall be provided.

(b) Lavatories shall be anchored to withstand an applied vertical load of 250 pounds on the front of the fixture.

(13) Bars, including those which are parts of soap dishes, towel bars, and other fixtures shall be anchored to a wall and withstand a concentrated load of 250 pounds.

R432-6-205. Common Areas.

(1) The facility shall provide a common room or rooms for dining, sitting, visiting, recreation, worship, and other activities.

(a) If concurrent activities are planned in a common room, the room shall be arranged to promote and facilitate the activities to minimize disruption through the use of physical barriers for separation.

(b) Space shall be provided for storing recreational equipment and supplies.

(2) The facility shall provide the following minimum space for recreational activities:

(a) in large facilities, 20 square feet per bed;

(b) in small facilities, 20 square feet per bed, or a minimum of 160 square feet total area whichever is greater;

(c) in a limited capacity facility, a minimum of 120 square feet.

(3) If a facility adds 40 square feet per bed to a bedroom area square footage requirement, or adds 80 square feet of recreation space in a separate living room within the resident

living unit, the square footage requirements for common recreational space may be reduced by 20 square feet per licensed bed in large and small facilities, not to exceed a reduction of 50 percent of the total common area square footage.

(4) The facility shall provide the following space for dining activities:

(a) in large and small facilities, a minimum of 15 square feet per licensed bed;

(b) in limited capacity facilities, a minimum of 100 square feet.

(5) If a kitchen and a minimum of 30 square feet of dining area space are provided in a resident unit in a large or small facility, then the common dining area may be reduced by 15 square feet per licensed bed. The maximum reduction shall be 50 percent of the total required dining area.

(6) A separate private living room for family or informal gatherings shall be provided in a large facility as part of the common area space. The private living room shall be a minimum of 110 square feet. If all resident living units include additional living space, the facility is not required to provide a separate private living room.

(7) Corridors and public reception space may not be included in the calculation for required square footage for dining or recreation space.

(8) The facility shall provide ten square feet per bed, or a minimum area of 100 square feet, whichever is greater, for outdoor recreation activities.

R432-6-206. Resident Support Areas.

A large facility shall provide a nourishment station which contains a work counter, a refrigerator, a sink, and cabinets for storage. The station may be located in a single purpose room, dining room, or in a kitchen if staff has 24-hour access to the area.

R432-6-207. Administrative and General Service Areas.

(1) There shall be space and equipment for the administrative services as follows:

(a) in large facilities, an administrative office of sufficient size to store records and equipment;

(b) in small and limited capacity facilities, a designated area for administrative activities and record storage.

(2) Storage shall be provided for securing staff belongings as follows:

(a) In large facilities, a room shall be provided to serve as a staff lounge with staff lockers for storage. A staff toilet room shall also be provided.

(b) In small and limited care facilities, a storage area shall be identified to store staff belongings.

(3) A large facility shall provide a public reception or information area.

(4) A telephone shall be provided for private use by residents and visitors.

R432-6-208. Special Design Features.

(1) A signal system shall be provided to alert staff of a resident's need for help.

(2) The signal system shall be designed to:

(a) operate from each resident's living unit and from each bath room or toilet room;

(b) transmit a visual and auditory signal to a 24-hour staffed location, except a limited capacity facility signal system shall produce an auditory signal to summon staff;

(c) identify the location of the resident summoning help; and

(d) allow it to be turned off at the source of the call.

(3) Large and small facilities shall provide a thermostat control in each resident living unit. The Department shall grant a variance upon request from the licensee to this requirement for an existing building seeking initial licensure.

(4) Plumbing shutoff valves shall be located on the main water supply line and at each fixture. In addition, large facilities shall provide an accessible shutoff valve on each primary hot and cold branch of the water line and shall provide a minimum of two hot and two cold water zones. The Department shall grant a variance upon request from the licensee to this requirement for an existing building seeking initial licensure.

(5) Building entrances in large and small facilities shall be at grade level, clearly marked, and located to minimize the need for residents to traverse other program areas. A main facility entrance shall be designated and accessible to persons with disabilities.

(6) Special units intended to accommodate residents with Alzheimers or Dementia shall comply with Section 8.8 of the Guidelines for Design and Construction of Hospital and Health Care Facilities, 1996-97 edition, which is adopted and incorporated by reference.

R432-6-209. General Standards for Details.

(1) Each resident living unit entry door shall be constructed as follows:

(a) be 36 inches wide;

(b) open inward into the resident living unit or designed so that an outward swinging door does not restrict the corridor width;

(c) be lockable, but operable from the inside by single-action lever; and

(d) be individually keyed with the key under resident control.

(2) A master key shall be available for staff.

(3) Door handles for all doors used by residents shall be of the lever type and shall meet ADAAG requirements. Building entrances and exit doors may have panic hardware.

(4) Each door to toilet and bathing facilities shall comply with ADAAG and the following:

(a) be equipped with hardware which permits emergency access from the outside; and

(b) open out or be double acting.

(5) Handrails shall meet the requirements of ADAAG and be provided on both sides of all resident corridors.

R432-6-210. Linen Services.

(1) Each facility shall have space and equipment to store and process clean and soiled linen as required for resident care. Laundry may be done within the facility, in a building on or off-site, or in a commercial or shared laundry.

(2) If laundry is done off the site, the following shall be provided:

(a) a room for receiving and holding soiled linen until ready for pickup or processing;

(b) a central, clean linen storage room(s); and

(c) a lavatory in each area where unbagged, soiled linen is handled.

(3) If a large or small facility processes its own laundry on-site, the following shall be provided:

(a) a room for receiving, holding, and sorting soiled linens, with pre-wash clinical sink facilities and separate hand washing facilities;

(b) a laundry processing room with washer(s) and dryer(s);

(c) storage for laundry supplies;

(d) arrangement of equipment that will permit an orderly workflow and minimize cross-traffic that might mix clean and soiled operations; and

(e) a central, clean linen storage room(s);

(f) Facilities may provide holding rooms on each level for bagged, soiled linen.

(4) If a limited capacity facility processes its own laundry on-site, the following shall be provided:

(a) a room to store and process both clean and soiled linen;

(b) a washer and dryer; and

(c) a utility sink in the laundry room.

(5) Each facility shall provide a minimum of one washing machine, one clothes dryer, and ironing equipment in good working order for resident use.

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R432. Health, Health Systems Improvement, Health Facility Licensure.
R432-149. Intermediate Care Facility.
R432-149-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-149-2. Purpose.

The purpose of this rule is to promote the public health and welfare through the establishment and enforcement of licensure rules. This rule sets standards for the operation of Intermediate Care Nursing Facilities.

R432-149-3. General Provisions.

(1) Compliance.

All intermediate nursing care facilities shall be in full compliance at the time of licensure.

(2) Each facility shall comply with this rule, applicable sections of R432-150 and their own adopted policies and procedures.

(3) All facilities shall comply with the most restrictive standard. (In addition Medicare and Medicaid certified facilities must comply with Title XVIII and Title XIX regulations.)

R432-149-4. Definitions.

(1) See common definitions in R432-1-3.

(2) See definitions R432-150-5.

R432-149-5. Scope of Services.

(1) Intermediate Care Facility.

An intermediate care facility (ICF) shall provide 24-hour inpatient care to residents who need licensed nursing supervision and supportive care, but who do not require continuous nursing care.

(a) The facility shall provide at least the following:

(i) Twenty-four hour nursing staff coverage:

(A) In facilities with 35 beds or more, there shall be 16 hours of licensed nurse coverage of which eight hours must be on the day shift.

(B) In facilities with 34 beds or less, there shall be eight hours of licensed nurse coverage on the day shift (see R432-149-23(6)).

(ii) Provision for medical supervision;

(iii) Provision for dietary services;

(iv) Provision for social services;

(v) Provision for recreational therapy.

(b) The following services shall be provided as required in the resident care plan:

(i) physical therapy;

(ii) occupational therapy;

(iii) speech therapy;

(iv) respiratory therapy; and

(v) other therapies as required.

(2) Hospice Services.

(a) See R432-750 for eligibility requirements.

(b) Nursing care facilities are not required to obtain a Hospice license, but shall comply with the following requirements:

(i) if, during the care planning process for a terminally ill resident, bereavement services, clergy services, hospice counseling services, or volunteer services are determined to be appropriate under a hospice program of care, the facility shall provide the identified services in accordance with the applicable requirements of R432-750-14;

(ii) facility staff responsible for delivering the identified service shall be properly oriented and trained in the hospice concept and philosophy of care and the proper performance of assigned duties.

(3) Intermediate nursing care facilities may provide respite services which shall comply with the following requirements:

(a) The purpose of respite is to provide intermittent, time limited care to give primary caretakers relief from the demands of caring for a person.

(b) Respite services may be provided at an hourly rate or daily rate, but shall not exceed 14-days for any single respite stay. Stays which exceed 14 days shall be considered a nursing facility admission, and shall be subject to the admission requirements of R432-149.

(c) The facility shall coordinate the delivery of respite services with the recipient of services, case manager, if one exists, and the family member or primary caretaker.

(d) The facility shall document the person's response to the respite placement and coordinate with all provider agencies to ensure an uninterrupted service delivery program.

(e) The facility must complete the following:

(i) A Level 1 Preadmission Screening upon the persons admission for respite services.

(ii) A service agreement to serve as the plan of care. The service agreement shall identify the prescribed medications, physician treatment orders, need for assistance for activities of daily living and diet orders.

(f) The facility shall have written policies and procedures available to staff regarding the respite care clients which include:

(i) Medication administration;

(ii) Notification of a responsible party in the case of an emergency;

(iii) Service agreement and admission criteria;

(iv) Behavior management interventions;

(v) Philosophy of respite services;

(vi) Post-service summary;

(vii) Training and in-service requirement for employees; and

(viii) Handling personal funds.

(g) Persons receiving respite services shall be provided a copy of the Resident Rights documents upon admission.

(h) The facility shall maintain a record for each person receiving respite services which includes:

(i) Retention and storage of records shall comply with R432-150-27(2).

(ii) Confidentiality and release of information shall comply with R432-150-27(3).

(iii) The record shall contain the following:

(A) Service agreement;

(B) Demographic information and resident identification data;

(C) Nursing notes;

(D) Physician treatment orders;

(E) Records made by staff regarding daily care of the

person in service;

(F) Accident and injury reports;

(G) Post-service summary.

(i) If a person has an advanced directive, a copy shall be filed in the record and staff informed.

R432-149-6. Licensure.

(1) See R432-2. License Required.

(2) R432-150-7(2).

R432-149-7. Construction.

Refer to R432-5, Nursing Facility Construction.

R432-149-8. Licensee.

(1) Each facility shall be operated by a licensee.

(2) Duties and Responsibilities.

(a) The licensee shall be responsible for compliance with Utah law and licensure requirements and for the organization, management, operation, and control of the facility.

(b) Responsibilities shall include the following:

(i) Comply with all federal, state and local laws, rules and regulations;

(ii) Adopt and institute bylaws, policies and procedures relative to the general operation of the facility including the health care of the residents and the protection of their rights;

(iii) Adopt a policy that states the facility shall not discriminate on the basis of race, color, sex, religion, ancestry or national origin in accordance with Section 13-7-1;

(iv) Appoint, in writing, a qualified administrator, licensed pursuant to Title 58, Chapter 15;

(v) Secure and update contracts for professional and other services;

(vi) Receive and respond to the annual inspection by the Department.

R432-149-9. Administrator.

(1) Qualifications.

(a) The administrator shall be licensed as a health facility administrator by the Utah Department of Commerce pursuant to Title 58, Chapter 15.

(b) The administrator's license shall be posted in a place readily visible to the public.

(c) The administrator may supervise no more than one nursing care facility.

(d) The administrator shall have sufficient freedom from other responsibilities to permit attention to the management and administration of the facility.

(e) The administrator shall designate, in writing, the name and title of the person who shall act as administrator in any temporary absence of the administrator. This person shall have the authority and freedom to act in the best interests of resident safety and well-being. It is not the intent of this paragraph to permit an unlicensed de facto administrator to supplant or replace the designated, licensed administrator.

(2) The administrator's responsibilities include those found in R432-150-26(3).

R432-149-10. Medical Director.

(1) Medical Director or Advisory Physician.

The administrator shall retain by formal agreement a licensed physician to serve as medical director or advisory physician according to resident and facility need.

(2) Responsibilities.

The medical director or advisory physician shall have responsibility for the following:

(a) Develop or review written resident care policies and procedures including the delineation of responsibilities of attending physicians;

(b) Review resident care policies and procedures annually with the administrator;

(c) Serve as a liaison between resident physician and the administrator;

(d) Serve on the Infection Control Committee, Pharmacy Committee, Resident Care Policy Committee, and others as designated;

(e) Review incident and accident reports at the request of the administrator to identify health hazards to residents and employees;

(f) Act as consultant to the director of nursing service or the health services supervisor in matters relating to resident care policies.

R432-149-11. Staff and Personnel.

(1) Organization.

The administrator shall employ personnel who are able and competent to perform their respective duties, services, and functions.

(2) Qualifications and Orientation.

(a) The administrator, director of nursing, and department supervisors shall develop job descriptions for each position including job title, job summary, responsibilities, qualifications, required skills and licenses, and physical requirements.

(b) Periodic employee performance evaluations shall be documented.

(c) All personnel shall have access to facility policy and procedure manuals and other information necessary to effectively perform duties and carry out responsibilities.

(d) All personnel shall be licensed, certified or registered as required by the Utah Department of Commerce. A copy of the license, certification or registration shall be maintained for Department review.

(e) Failure to ensure that staff members are licensed, registered or certified may result in sanctions to the facility license.

(3) Health Surveillance.

(a) See R432-150-26(6)(a) through (e).

(b) All dietary and other staff who handle food shall obtain a Food Handler's Permit from the local health department.

(4) In-service Training.

(a) There shall be planned and documented in-service training for all facility personnel.

(b) The following topics shall be addressed annually:

(i) Fire prevention;

(ii) Review and drill of emergency procedures and evacuation plan;

(iii) Prevention and control of infections;

(iv) Accident prevention and safety procedures including instruction in at least the following:

(A) Body mechanics for all employees required to lift, turn, position, or ambulate residents; and

(B) Proper safety precautions when floors are wet or waxed.

(v) Proper bath and shower temperatures;

(vi) Proper safety precautions in the use of heat lamps and hot water bottles;

(vii) Oral hygiene;

(viii) Training in rehabilitative nursing for all nursing personnel (see R432-149-23(13));

(ix) Training in the principles of Cardiopulmonary Resuscitation (CPR) for licensed nursing personnel and others as appropriate;

(x) Proper use and documentation of restraints;

(xi) Residents' Rights;

(xii) Reporting suspected or observed abuse, neglect and exploitation; and

(xiii) Confidentiality of resident information.

(5) Nurse Aides.

(a) Any person who provides nursing care including nurse aides and orderlies, shall work under the supervision of an RN or LPN, shall demonstrate competency and dependability in resident care and shall be registered as a health care assistant with the Utah Department of Commerce.

(b) Prior to employing an individual as a nurse aide, the administrator shall, by submitting the applicant's name and other identifying information to the Department of Education's statewide nurse aide registry, determine that a verified report of resident abuse, neglect, or exploitation by that person has not been recorded. If such a verified report exists, the applicant shall not be employed.

R432-149-12. Smoking Policy.

(1) Smoking shall comply with Title 26, Chapter 38 the "Utah Indoor Clean Air Act" and the rules adopted there under and Section 31-4.4 of the 1991 Life Safety Code.

(2) Residents, who were admitted to the facility prior to January 1, 1995, shall be permitted to smoke only where proper facilities are provided.

R432-149-13. Contracts and Agreements.

(1) Contracts.

(a) The licensee shall secure and update contracts for required professional services not provided directly by the facility.

(b) Contracts shall document the following:

(i) The effective and expiration date of contract;

(ii) A description of goods or services provided by the contractor to the facility;

(iii) A statement that the contractor shall conform to the standards required by Utah law or rules;

(iv) A provision to terminate the contract with advance notice;

(v) The financial terms of the contract;

(vi) A copy of the business or professional license of the contractor;

(vii) A provision to report findings, observations, and recommendations to the administrator on a regular basis.

(c) Contracts shall be signed and dated and maintained for review by the Department.

(2) Transfer Agreements.

(a) The licensee shall maintain, where appropriate, a written transfer agreement with one or more hospitals or nearby health facilities to facilitate the transfer of residents and essential resident information.

(b) The transfer agreement shall include provisions for:

(i) Criteria for transfer;

(ii) Appropriate methods of transfer;

(iii) Transfer of information needed for proper care and treatment of the resident transferred;

(iv) Security and accountability of personal property of the resident transferred;

(v) Proper notification of hospital and responsible person before transfer;

(vi) The facility responsible for resident care in the process of transfer;

(vii) Resident confidentiality.

R432-149-14. Quality Assurance.

(1) The administrator shall monitor the quality of services offered by the facility through the formation of a committee or committees that address infection control, pharmacy, resident care, and safety.

(a) Composition of the committee or committees shall conform to the requirements in R432-149-14.

(b) The committee or committees shall meet at least quarterly and keep minutes of the proceedings.

(c) The minutes shall be available for review by the Department.

(2) See R432-150-29.

(3) Resident Care Policy Committee.

(a) The Resident Care Policy Committee shall include the administrator, medical director or advisory physician and director of nursing service.

(b) Representatives from each service offered by the facility shall be available as consultants.

(c) The Committee shall:

(i) Review the facility's resident care policies at least annually, and make recommendations to the medical director/advisory physician;

(ii) Review and respond to recommendations of other facility quality assurance committees to improve resident care.

(4) Safety Committee.

(a) The Safety Committee shall include the administrator, director of nursing services, head housekeeper, chief of facility maintenance, and others as designated by facility policy.

(b) The Committee shall:

(i) Review all incident and accident reports and recommend changes to the administrator to prevent or reduce their reoccurrence;

(ii) Review facility safety policies and procedures, at least annually, and make recommendations;

(iii) Establish a procedure to inspect the facility periodically for hazards. An inspection report shall be filed with the Safety Committee.

R432-149-15. Infection Control.

See R432-150-25.

R432-149-16. Pharmacy Services.

See R432-150-24.

R432-149-17. Emergency and Disaster.

(1) General Provisions.

(a) The facility shall be responsible to assure the safety and well-being of their residents and make provisions for a safe environment in the event of an emergency or disaster.

(b) An emergency or disaster may include utility interruption (gas, water, sewer, fuel or electricity), explosion, fire, earthquake, bomb threat, flood, windstorm, epidemic, and injury.

(2) See R432-150-28.

(3) Emergency Plan.

(a) The facility's emergency plan shall delineate:

(i) The person or persons with decision-making authority for fiscal, medical, and personnel management;

(ii) On-hand personnel, equipment, and supplies and how to acquire additional help, supplies, and equipment after an emergency or disaster;

(iii) Assignment of personnel to specific tasks during an emergency;

(iv) Methods of communicating with local emergency agencies, authorities, and other appropriate individuals;

(v) The individuals who shall be notified in an emergency in order of priority. Telephone numbers shall be accessible to staff at each nurses' station;

(vi) Method of transporting and evacuating residents and staff to other locations;

(vii) Conversion of the facility for emergency use.

(b) There shall be documentation of emergency events and responses and a record of residents and staff evacuated from the facility to another location. Any resident emergency shall be documented in the resident's record.

(c) Simulated disaster drills shall be held semi-annually for all staff, in addition to fire drills.

(d) There shall be regular in-service training on disaster preparedness for all staff.

(4) Fire Emergencies.

(a) The licensee and administrator shall develop a written fire emergency and evacuation plan in consultation with qualified fire safety personnel.

(b) An evacuation plan delineating evacuation routes, location of fire alarm boxes, fire extinguishers, and emergency telephone numbers of the local fire department shall be posted in exit access ways throughout the facility.

(c) The written fire or emergency plan shall include fire containment procedures and how to use the facility alarm systems and signals.

(d) At least 12 fire drills shall be held each year, one drill per shift per quarter. The actual evacuation of residents during a drill is optional.

R432-149-18. Resident Rights.

(1) Written residents' rights shall be established, posted in areas accessible to residents, and made available to the resident, and the guardian, or responsible party.

(2) A copy of the residents' rights document shall be available to the public and the Department upon request.

(3) The facility shall ensure that each resident admitted to the facility has the right to:

(a) Be informed, prior to or at the time of admission and during his stay, of residents' rights and of all rules and regulations governing resident conduct (see R432-150-9(1)(a) through (c).

(b) Be informed, prior to or at the time of admission and during stay, of services available in the facility and of related charges, including any charges for services not covered by the facility's basic per diem rate or not covered under Titles XVIII or XIX of the Social Security Act.

(c) Be informed by a physician or practitioner his total health status, including:

(i) his medical condition, unless medically contraindicated;

(ii) See R432-150-9(4)(a) through (c);

(d) Be transferred or discharged only for medical reasons, or personal welfare or that of other residents, or for nonpayment for the stay, and to be given reasonable advance notice to ensure orderly transfer or discharge; such actions shall be documented in the person's health record;

(e) Be encouraged and assisted throughout the period of stay to exercise his rights as a resident and as a citizen, and to voice grievances and recommend changes in policies and services to facility staff and outside representatives of personal choice, free from restraint, interference, coercion, discrimination, or reprisal;

(f) Manage personal financial affairs, or to be given at least a quarterly accounting of financial transactions made on his behalf should the facility accept his written delegation of this responsibility;

(g) Be free from mental and physical abuse, and to be free from chemical and physical restraints except as authorized in writing by a physician or practitioner for a specified and limited period of time, or when necessary to protect the resident from injury to himself or to others;

(h) Be assured confidential treatment of personal and medical records and to approve or refuse their release to any individual outside the facility, except in the case of transfer to another health facility, or as required by law or third party payment contract;

(i) Be treated with consideration, respect, and full recognition of dignity and individuality, including privacy in treatment and in care for personal needs;

(j) Not be required to perform services for the facility that are not included for therapeutic purposes in the plan of care;

(k) Associate and communicate privately with persons of choice, and to send and receive personal mail unopened;

(l) Meet with social, religious, and community groups and participate in activities at his discretion;

(m) Retain and use his personal clothing and possessions as space permits, unless to do so would infringe upon rights of other residents;

(n) If married, to be assured privacy for visits by the spouse and if both are residents in the facility, to be permitted to share a room;

(o) Have members of the clergy admitted at the request of the resident or person responsible at any time;

(p) Allow relatives or responsible persons to visit critically

ill residents at any time;

(q) Be allowed privacy for visits with family, friends, clergy, social workers or for professional or business purposes; and

(r) Have access to telephones both to make and receive confidential calls;

(4) Safeguards for Residents' Monies and Valuables.

Each facility to whom a resident's money or valuables have been entrusted according to R432-149-18(2)(f) shall comply with the following:

(a) No licensee or facility staff shall use residents' monies or valuables as his own or mingle them with his own. Residents' monies and valuables shall be separated and intact and free from any liability that the licensee incurs in the use of his own or the institution's funds and valuables.

(b) Each licensee shall maintain adequate safeguards and accurate records of residents' monies and valuables entrusted to the licensee's care.

(i) Records of residents' monies which are maintained as a drawing account shall include a control account for all receipts and expenditures, an account for each resident and supporting vouchers filed in chronological order.

(ii) Each account shall be kept current with columns for debits, credits, and balance.

(iii) Records of residents' monies and other valuables entrusted to the licensee for safekeeping shall include a copy of the receipt furnished to the resident or to the person responsible for the resident.

(c) Residents' monies not kept in the facility shall be deposited within five days of receipt of such funds in an interest-bearing account in a local bank or savings and loan association authorized to do business in Utah, the deposits of which shall be insured.

(d) A person, firm, partnership, association or corporation which is licensed to operate more than one health facility shall maintain a separate account for each such facility and shall not commingle resident funds from one facility with another.

(e) When the amount of residents' money entrusted to a licensee exceeds $150, all money in excess of $150 shall be deposited in an interest-bearing account as specified in R432-149-18(4)(c) and (d).

(f) When a resident is discharged, all money and valuables of that resident which have been entrusted to the licensee shall be surrendered to the resident in exchange for a signed receipt. Money and valuables kept within the facility shall be surrendered upon demand and those kept in an interest-bearing account shall be made available within three working days.

(g) Within 30 days following the death of a resident, except in a coroner or medical examiner case, all money and valuables of that resident which have been entrusted to the licensee shall be surrendered to the person responsible for the resident or to the executor or the administrator of the estate in exchange for a signed receipt. When a resident dies without a representative or known heirs, immediate written notice thereof shall be given by the facility to the State Medical Examiner and the registrar of the local probate court and a copy of said notice shall be filed with the Department.

R432-149-19. Admission and Discharge.

Each facility shall develop written admission and discharge policies that shall be available to the public upon request.

(1) Admission Policies.

(a) Residents shall be accepted for treatment and care only if the facility is properly licensed for the treatment required and has the staff and resources to meet the medical, physical, and emotional needs of the resident.

(b) Residents shall be admitted by, and remain under the care of, a physician or individual licensed to prescribe care for the resident.

(i) There shall be a written physician order or a documented telephone order for admission and care of the resident at the time of admission.

(ii) A resident shall be assessed within seven days of admission. Admission policies shall define the assessment process including identifying the resident's medical, nursing, social, physical, and emotional needs.

(c) A physical examination shall be performed, in accordance with R432-149-22(5)(a), by the attending physician or by an individual licensed and so authorized.

(d) Upon admission, a brief narrative of the resident's condition including temperature, pulse, respiration, blood pressure, and weight shall be documented. The admission record shall be completed according to R432-150-27.

(e) The resident shall be informed of his rights as a resident. A written copy of the facility's residents' rights shall be explained and given to the resident. If the resident is unable to comprehend these rights a written copy shall be given to the guardian or responsible party. The whole process shall be documented in the resident's record.

(2) Discharge Policies.

(a) The resident shall be discharged when the facility is no longer able to meet the resident's needs.

(b) There shall be a physician's order for resident discharge by the physician or practitioner. In cases of discharge against medical advice, the attending physician or practitioner shall be contacted and the response documented.

(c) Discharge planning shall be coordinated with the resident, family and other appropriate parties or agencies who are able to meet the resident's needs.

(d) The resident shall have 30 days advance notice of discharge except in cases of medical emergency.

(e) A discharge summary containing a brief narrative of the resident's diagnoses, course of treatment, conditions, and final disposition shall be documented in the medical record.

R432-149-20. Pets in Long-Term Care Facility.

See R432-150-30.

R432-149-21. Volunteers.

(1) Volunteers may be utilized in the daily activities of the facility but shall not be included in the facility's staffing plan in lieu of facility employees.

(2) Volunteers shall be supervised and familiar with resident's rights and the facility's policies and procedures.

(3) Volunteers who provide personal care to residents shall be screened and under the direct supervision of a qualified employee.

R432-149-22. Physician Services.

(1) General Requirements.

(a) Each resident in need of medical services shall be under the care of a physician or practitioner licensed to practice in Utah.

(b) Each resident shall be permitted to choose a personal physician or medical practitioner.

(c) Upon admission, each resident shall have orders from a personal physician or licensed practitioner for treatment and care.

(2) Physician Responsibilities.

(a) Each resident shall have a medical history and pertinent physical examination signed and dated by the attending physician or individual authorized and licensed to sign.

(i) Physical examinations for residents requiring intermediate level care shall be completed 30 days before or seven days after admission.

(ii) For residents admitted to the facility directly from a hospital, the hospital's record of history and physical examination may be substituted for R432-149-22(5)(a).

(b) A physician or licensed practitioner shall evaluate each resident at least once during the first 60 days of residency;

(c) Subsequently, the attending physician or licensed practitioner shall examine the resident whenever necessary but at least every other month, at approximately 60 day intervals, unless the physician or practitioner documents in the resident record why the resident does not need to be examined this frequently.

(d) Physician and practitioner visits and evaluations shall be documented in the resident's record.

(e) The physician or practitioner shall renew medication and treatment orders at least quarterly for intermediate residents.

(3) Policies and Procedures.

There shall be policies and procedures that provide for:

(a) Access to physician and practitioner services in case of medical emergency;

(b) Names and telephone numbers of on-call physicians and practitioners at each nurses' station;

(c) Alternate physician or practitioner coverage and documentation when the attending physician is not available;

(d) Re-evaluation of the resident and review of care and treatment orders when there is a change of attending physician or practitioner. This shall be completed within 15 days of such change.

(4) Non-Physician Practitioners.

The following professionals may render medical services to residents in the facility, as permitted by state law:

(a) Nurse practitioners licensed to practice in Utah;

(b) Physician assistants working under the responsibility and supervision of a physician licensed in Utah and performing only those selected diagnostic and therapeutic tasks identified in Section 58-12-77.

(5) Physician Orders.

(a) The following items shall be part of the treatment record and shall be signed and dated by a physician or practitioner:

(i) Admission orders for a resident admitted to an intermediate care facility;

(ii) Medication, treatment, therapy, laboratory, and diet orders;

(iii) History and physical examinations;

(iv) Discharge orders;

(v) Progress notes;

(vi) Discharge summary;

(vii) All telephone orders shall be recorded immediately in the residents record and shall include date and time of order and the receiver's signature and title. The order shall be countersigned and dated within 15 days by the person who prescribed the order.

(b) The attending physician shall complete the resident's medical record within 30 days of the resident's discharge, transfer, or death.

R432-149-23. Nursing Services.

(1) Organization.

(a) Each facility shall provide nursing services commensurate with the needs of the residents served.

(b) All nursing personnel shall maintain current Utah licenses to practice nursing.

(2) Direction - Intermediate Care Facility.

(a) The administrator of each intermediate care facility shall employ and designate, in writing, a health-services supervisor who shall work generally full-time on the day shift.

(i) The health-services supervisor may be either a registered nurse or a licensed practical nurse. Facilities with more than 60 residents or who have an intense resident care requirements shall have an experienced registered nurse for the position.

(ii) Facilities who employ a licensed practical nurse as the health-services supervisor shall retain, by written contract, a registered nurse consultant who shall meet regularly with the health-services supervisor.

(b) When a health-services supervisor serves a dual role as the administrator of a facility of 35 or more beds, a licensed nurse shall be employed to relieve the health-services supervisor of direct nursing responsibilities.

(c) The health-services supervisor shall designate, in writing, a licensed nurse to be in charge during any temporary absence of the health-services supervisor.

(3) Responsibilities of Director of Nursing Services or the Health-Services Supervisor.

The director of nursing services or the health-services supervisor shall be responsible to ensure that the following duties are carried out:

(a) Implement physicians' orders;

(b) Plan and direct the delivery of nursing care, services, treatments, procedures, and other services to assure that each resident's needs are met;

(c) Review each resident's health care needs, orders for care and treatment, and incorporate these into a resident care plan;

(d) Review the medication system for completeness of information, accuracy in the transcription of physician's orders, and adherence to stop-order policies;

(e) Instruct nursing staff on the legal requirements of charting and ensure that nurse's notes describe the care rendered and include the resident's response;

(f) Supervise nursing staff to assure they perform

restorative measures in their daily care of residents;

(g) Teach and coordinate rehabilitative nursing to promote and maintain optimal physical and mental functioning of the resident in accordance with the resident-care plan;

(h) Inform the administrator and attending physician of significant changes in the resident's health status;

(i) Plan with the physician, family, and health-related agencies for the care of the resident upon discharge;

(j) Develop, with the administrator, a nursing services procedure manual including all procedures practiced in the facility;

(k) Coordinate resident services through quality assurance and resident care review committees;

(l) Respond to the pharmacist's monthly medication report (see R432-149-16);

(m) Assign a number of qualified supervisory and supportive nurses and aides throughout a 24-hour period to assure that the health needs of residents are met;

(n) Develop written job descriptions for all levels of nursing personnel and orient all new nursing personnel to the facility, and their duties and responsibilities;

(o) Complete written performance evaluations for each member of the nursing staff at least annually. Documentation of the evaluation shall be available for Department review;

(p) Plan and conduct documented training programs for nursing staff.

(4) Responsibilities of Nurse Consultants to the LPN Health Services Supervisor in Intermediate Care Facilities.

(a) The registered nurse consultant shall have responsibilities clearly outlined in the written agreement with the facility.

(b) The registered nurse consultant shall provide consultation based on the facility's licensed bed capacity as follows:

TABLE 1
REGISTERED NURSE CONSULTATION

Number of Beds	Hours of Required RN Consultation
1-34	4 hours per month
35 and over	4 hours per week

(c) Each consultation visit shall be documented.

(d) Consultants shall provide assistance in at least the following:

(i) Assist in the development and annual review of nursing policies and procedures;

(ii) Review and evaluate health services to ensure that resident needs are met;

(iii) Assist in the development and review of resident care and habilitation plans as appropriate.

(5) Nursing Staff Hours.

(a) There shall be trained nursing staff to meet resident care needs.

(i) An intermediate care facility with 35 beds or more shall provide at least 16 hours of licensed nurse coverage seven days a week. There shall be eight hours of licensed nurse coverage on the day shift. Licensed nurses shall administer prescribed medications and treatments as ordered.

(ii) An intermediate care facility with 34 beds or less shall provide eight hours of licensed nurse coverage seven days a week on the day shift. The following shall also apply:

(A) The facility shall be staffed according to the standards outlined in R432-149-23(6).

(B) All prescribed medications shall be administered by licensed personnel.

(C) A licensed nurse shall be available or on-call to respond to an emergency.

(D) If the health-services supervisor is a licensed practical nurse, the nurse consultant shall be contacted within seven days of a new admission, to perform the initial assessment.

(b) Schedules shall be maintained to indicate the hours worked in each unit by regular and relief RNs, LPNs, and Aides. The facility shall retain staff schedules and payroll records for at least a 12-month period for Department review.

(6) Required Hours of Nursing Care.

(a) The facility shall provide the nursing care required by each resident. Aides performing housekeeping, dietary or other functions shall maintain time records reflecting the time spent in nursing care and other tasks. The time spent in other tasks shall not be counted in the nursing or direct care staffing ratios.

(b) The following table indicates the minimum acceptable hours of nursing care per resident. Additional staff may be necessary to ensure there is adequate coverage in the event of staff illness or turnover or sudden increase in resident population or similar events.

TABLE 2
HOURS OF NURSING CARE PER 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).
INTERMEDIATE	2.0 (120 minutes)	20% (24 minutes) (a)

(a) May not include director of nursing or health services supervisor in a facility with a resident census over 60.

(7) Nursing Services.

(a) The nursing services procedures manual shall be reviewed and updated annually by the director of nursing services or the health-services supervisor and shall be accessible to all nursing staff and available for review by the Department.

(b) The manual shall address the following procedures:

(i) Bathing;

(ii) Positioning;

(iii) Enema administration;

(iv) Decubitus care;

(v) Bed making;

(vi) Infection Control, including handwashing, staff illness, and isolation procedures in resident rooms, and laundry;

(vii) Urine testing;

(viii) Laboratory requisitions;

(ix) Telephone orders;

(x) Charting;

(xi) Rehabilitative nursing;

(xii) Resident diets and feeding;

(xiii) Oral hygiene and denture care;

(xiv) Medication administration (by licensed nurses or physicians only);

(xv) Oral suctioning (by licensed nurses or physicians

only);

(xvi) Tube feeding (by licensed nurses or physicians only);

(xvii) Tracheotomy care (by licensed nurses, physicians or appropriately trained personnel such as respiratory therapists only);

(xviii) Naso-gastric tube insertion and care (by registered nurses, LPNs, with appropriate training, or physicians only);

(xix) Intravenous (IV) therapy, (by registered nurses, LPNs, with appropriate training, or physicians only) if offered by facility.

(8) General Resident Care Policies.

(a) Each resident shall be treated as an individual with dignity and respect in accordance with Residents' Rights (R432-149-18). Each facility shall develop and implement resident care policies to be reviewed annually by the director of nursing services or by the health-services supervisor.

(b) These policies shall address at least the following:

(i) Each resident, upon admission, shall be oriented to the facility, services, and staff.

(ii) A narrative of the resident's condition including temperature, pulse, respiration, blood pressure, weight, and height shall be recorded in the resident's health record upon admission. Thereafter, the resident's weight and vital signs shall be taken and recorded as ordered by the attending physician or as established by the nursing care plan.

(iii) Each resident shall receive care to ensure good personal hygiene. This care shall include bathing, oral hygiene, shampoo and hair care, shaving or beard trimming, finger and toe nail care.

(iv) Each resident shall be encouraged or assisted to achieve and maintain the highest level of functioning and independence. This shall include teaching residents self-care, assisting residents to adjust to their disabilities, prosthetic devices, and directing residents in prescribed therapy exercises.

(v) Each resident shall receive preventive care and treatment for decubiti, contractures, and deformities.

(vi) Each resident shall receive good nutrition and adequate fluids for hydration.

(A) All residents shall have ready access to water and drinking utensils.

(B) Residents unable to feed themselves shall be fed in a prompt orderly manner.

(C) Residents shall be supplied with special eating and drinking utensils as needed.

(vii) Visual privacy shall be provided for each resident during treatments and personal care.

(viii) Resident call lights and signals shall be answered promptly.

(ix) Humidifier bottles on oxygen equipment shall be maintained in an aseptic manner.

(9) Resident Care Plans.

(a) A written care plan coordinated with nursing and other services shall be initiated for each resident upon admission which conforms to 42 CFR 483.20 Resident Assessment, 1993 edition.

(b) The resident care plan shall include the following information:

(i) Name, age, and sex of resident;

(ii) Admitting diagnosis and related problems;

(iii) The name of attending physician or practitioner;

(iv) Date of admission.

(c) The resident care plan shall outline the course of treatment for the resident including:

(i) Measurable objectives and goals of treatment, time frames for accomplishment or reevaluation, and the professional discipline responsible for each element of care;

(ii) Diet needs;

(iii) A discharge plan.

(d) The resident care plan shall be developed, reviewed, and revised, through resident care conferences with all professionals involved in the resident's care. Such conferences shall be documented.

(i) The initial resident care plan shall be developed from admission orders and other information obtained at, or prior to, admission. The physician's admission orders shall be implemented at the time of admission.

(ii) The resident care plan shall be completed within seven days of admission.

(iii) The resident care plan shall be reviewed and revised as required by the resident's condition but at least quarterly (at approximately 90-day intervals) for residents.

(e) Each resident's care shall be given in accordance with the resident care plan.

(f) The resident care plan shall be available to all personnel who provide care for the resident.

(g) The resident and his family or responsible party shall be invited to participate in the development and review of the plan of care.

(h) Upon transfer or discharge of the resident, relevant information from the resident care plan shall be available to the receiving institution or agency.

(i) Each month, at approximately 30 day intervals, a licensed nurse shall document in the resident's record a summary of the resident's condition based on the needs identified in the resident's care plan.

(10) Notification of Physician.

(a) The attending physician or practitioner shall be notified promptly upon:

(i) Admission of resident;

(ii) A sudden or marked adverse change in the resident's signs, symptoms, or behavior;

(iii) Any significant weight change in a 30-day period, unless the resident's physician stipulates another parameter in writing;

(iv) Any adverse response or reaction by a resident to a medication or treatment;

(v) Any error in medication administration or treatment;

(vi) Discovery of a decubitus ulcer, the beginning of treatment for decubitus ulcer, and if treatment is not effective.

(b) The physician or practitioner shall be notified if the facility is unable to obtain or administer drugs, equipment, supplies, or services promptly as prescribed. If the attending physician, practitioner, or designee is not readily available, emergency medical care shall be provided. The telephone numbers of the emergency care physician or practitioner shall be posted at nurses' stations.

(c) All attempts to notify physicians shall be noted in the resident's health record including the time and method of

communication and the name of the person acknowledging contact, if any.

(11) Notification of Family.

(a) The person in charge shall promptly notify the resident's family or guardian of an injury or adverse change in the resident's condition after the first attempt to notify the physician.

(b) This notification shall be documented in the resident record.

(12) Measures to Reduce Incontinence.

(a) Measures shall be implemented to prevent and reduce incontinence for each resident.

(b) There shall be a written assessment by a licensed nurse to determine the resident's ability to participate in a bowel and bladder management program.

(i) An individualized plan for each incontinent resident shall be established and implemented within two weeks of the initial assessment.

(ii) The individualized plan shall become a part of the resident care plan.

(c) During the resident's first month in the bowel and bladder management program, a licensed nurse shall evaluate the resident's performance weekly. This information shall be recorded in the resident's record.

(d) Fluid intake and output shall be recorded for each resident receiving IV therapy and for other residents as ordered by the physician or Director of Nursing Services. IV therapy is not permitted in Intermediate Care Nursing Facilities.

(i) Intake and output records shall be evaluated at least weekly and each evaluation shall be included in the resident's record;

(ii) Intake and output orders shall be evaluated periodically.

(13) Rehabilitative Nursing.

(a) Nursing personnel shall be trained in rehabilitative nursing. Rehabilitative nursing services shall be performed daily for residents who require such services and documented in the resident's record.

(b) Rehabilitative services shall be provided to maintain function or to improve the resident's ability to carry out the activities of daily living, services may include at least the following:

(i) Turning and positioning residents;

(ii) Assisting residents to ambulate;

(iii) Improving residents range of motion;

(iv) Restorative feeding;

(v) Bowel and bladder retraining;

(vi) Teaching residents self care;

(vii) Teaching residents transfer skills;

(viii) Teaching residents self-administration of medications;

(ix) Taking measures to prevent secondary disabilities such as contractures and decubitus ulcers.

(14) Administration of Medication and Treatments.

(a) No medication or treatment shall be administered except on the order of a person lawfully authorized to give such order.

(b) Medications and treatments shall be administered as prescribed and according to facility policy.

(c) All medications and treatments shall be administered by licensed medical or licensed nursing personnel.

(d) Monitoring of vital signs and other observations done in conjunction with the administration of medication shall be done as ordered by the physician or practitioner and as indicated by accepted professional practice.

(e) Preparation of doses for more than one scheduled administration time shall not be permitted.

(f) Medication shall be administered when ordered or as soon thereafter as possible but no more than two hours after dose has been prepared. Medication shall be administered by the same person who prepared the dose for administration.

(g) Residents shall be identified prior to the administration of any drug or treatment.

(h) No medication shall be used for any resident other than the resident for whom it was prescribed.

(i) All nursing personnel shall comply with the provisions for administration of medication according to standards and ethics of the professions.

R432-149-24. Restraint and Behavior Management Policy.

See R432-150-11.

R432-149-25. Equipment.

(1) The facility shall provide equipment in good working order to meet the needs of residents. Disposable and single use items shall be properly disposed of after use.

(2) Nursing equipment shall include at least the following:

(a) Self-help ambulation devices such as wheel chairs, walkers, and other devices for temporary or emergency use. Facility policy may require that residents obtain their own equipment for long-term use;

(b) Blood pressure apparatus and stethoscopes;

(c) Thermometers;

(d) Weight scales to weigh all residents;

(e) Bedpans, urinals, and equipment to clean them;

(f) Water pitchers, drinking glasses, and resident gowns;

(g) Catheter equipment (sterile catheters, syringes, irrigating solutions);

(h) Drug service trays or mobile-medication carts;

(i) Emergency oxygen including equipment for its administration;

(j) Emesis basins;

(k) Linens including sheets, blankets, bath towels, and washcloths for not less than three complete changes of the facility's licensed bed capacity. There shall be a bedspread for each resident bed;

(l) Personal items including toothbrush, comb, hair brush, soap for bathing and showering, denture cups, shaving apparatus, and shampoo;

(m) An individual chart for each resident;

(n) Flashlights;

(o) Gloves (sterile and unsterile);

(p) Ice bags;

(q) Intravenous therapy supplies, if such service is provided.

R432-149-26. Dietary Services.

See R432-150-20.

R432-149-27. Social Services.

(1) The facility shall make provision for social services which assist staff, residents, and residents' families to understand and cope with the residents' social, emotional, and related health problems.

(2) See R432-150-15.

R432-149-28. Recreation and Activity Services.

(1) In each facility, there shall be an organized activity program for individual residents and groups of residents.

(2) Participation.

(a) Residents may be encouraged but not required to participate in recreational activities.

(b) The physician shall indicate in the resident record if participation in recreational activities is contraindicated by the resident's medical condition.

R432-149-29. Laboratory Services.

(1) The facility shall make provision for laboratory services (See R432-150-26(11)).

(2) If the facility provides its own laboratory service, these services shall comply with R432-100-26, Laboratory and Pathology Services in the General Hospital Facility Rules.

(3) Construction and equipment standards shall conform with R432-5.

(4) If the facility does not provide laboratory services directly, provision shall be made for such services.

(a) The facility shall have a written agreement with a provider which documents services to be provided.

(b) Reports or results shall be reported promptly to the attending physician and documented in the resident's medical record.

(c) The facility shall make provision for the transportation of the resident for tests or services.

(d) The facility shall provide trained personnel and space for tests and treatment as set forth in the agreement.

R432-149-30. Radiology Services.

(1) If the facility provides its own radiology services, these shall comply with R432-100-29 Radiology Services in the General Hospital Facility Rules.

(2) Construction and equipment standards shall conform with R432-4.

(3) If the facility does not provide laboratory services directly, provision shall be made for such services.

(a) The facility shall have a written agreement with a provider which documents services to be provided.

(b) Reports or results shall be reported promptly to the attending physician and documented in the resident's medical record.

(c) The facility shall make provision for the transportation of the resident for tests or services.

(d) The facility shall provide trained personnel and space for tests and treatment as set forth in the agreement.

R432-149-31. Dental Services.

(1) The facility shall have a policy governing regular and emergency dental care for residents.

(2) Such provisions shall include:

(a) Development of oral hygiene policies and procedures with input from dentists;

(b) Presentation of oral hygiene in-service programs by knowledgeable persons;

(c) Development of referral service for those residents who do not have a personal dentist;

(d) Arrangement for transportation to and from the dentist's office.

R432-149-32. Specialized Rehabilitative Services.

(1) Organization.

(a) A facility that provides specialized rehabilitative services may offer these services directly or through agreements with outside agencies or qualified therapists.

(b) If the facility does not provide specialized rehabilitative services, the facility shall not admit nor retain residents in need of such services.

(2) Personnel.

(a) Specialized rehabilitative services shall be provided by qualified licensed therapists in accordance with Utah law and accepted practices.

(b) Therapists shall offer a full-scope of services to the resident.

(c) All therapy assistants shall be qualified and shall work under the direct supervision of the licensed therapist at all times.

(d) Speech pathologists shall have a "Certificate of Clinical Compliance" from the American Speech and Hearing Association.

(3) Policies and Procedures.

(a) Services shall be provided only on the written order of an attending physician.

(b) Safe and adequate space and equipment shall be available commensurate with the needs of the resident.

(c) A plan of treatment shall be initiated by an attending physician and developed by the therapist in consultation with the nursing staff.

(d) An initial progress report shall be submitted to the attending physician two weeks after treatment is begun or when specified by the physician.

(e) The physician and therapist shall review and evaluate the plan of treatment monthly unless the physician recommends an alternate schedule in writing.

(f) There shall be documentation in the resident record of the specialized plan of treatment.

R432-149-33. Medical Records.

See R432-150-27.

R432-149-34. Housekeeping.

(1) There shall be housekeeping services to maintain a clean, sanitary, and healthy environment in the facility.

(2) If the facility contracts for housekeeping services with an outside agency, there shall be a signed and dated agreement that details all services provided. The housekeeping service shall meet all the requirements of section R432-150-16(2).

R432-149-35. Laundry Services.

See R432-150-32.

R432-149-36. Maintenance Services.
See R432-150-33.

KEY: health facilities
March 5, 1996 **26-21-5**
Notice of Continuation January 29, 1999

R432. Health, Health Systems Improvement, Health Facility Licensure.

R432-270-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-270-2. Purpose.

(1) This rule establishes the operational standards for assisted living facilities.

(2) Assisted living as provided in 26-21-2(3) means:

(a) A Type I assisted living facility is a residential facility that provides assistance with activities of daily living and social care to two or more residents who are capable of achieving mobility sufficient to exit the facility without the assistance of another person;

(b) A Type II assisted living facility is a residential facility with a home-like setting that provides an array of coordinated supportive personal and health care services, available 24 hours per day, to residents who have been assessed.

(c) Each resident in a Type I or Type II assisted living facility must have a service plan based on the assessment, which may include:

(i) specified services of intermittent nursing care

(ii) administration of medication; and

(iii) support services promoting residents' independence and self-sufficiency.

(3) Assisted living is intended to enable persons experiencing functional impairments to receive 24-hour personal and health-related services in a place of residence with sufficient structure to meet care needs in a safe manner.

(4) Assisted living services shall be individualized to:

(a) maintain each individual's capabilities and facilitate using those abilities;

(b) create options to enable individuals to exercise control over their lives,

(c) provide supports which validate the self-worth of each individual by showing courtesy and respect for the individual's rights;

(d) maintain areas or spaces which provide privacy; and

(e) recognize each individual's needs and preferences and be flexible in service delivery to respond to those needs and preferences.

(5) Assisted living is intended to allow residents to choose how they will balance risk and quality of life.

(6) Type II assisted living facilities shall provide substantial assistance with activities of daily living, in response to a medical condition, above the level of verbal prompting, supervision, or coordination.

(7) Type II assisted living facilities shall provide each resident with a separate living unit. Two residents may share a unit upon written request of both of the residents.

(8) Type II assisted living is intended to enable residents, to the degree possible, to age in place.

R432-270-3. Definitions.

(1) The terms used in these rules are defined in R432-1-3.

(2) In addition:

(a) "Assistance with the activities of daily living and independent activities of daily living" means prompting and assisting residents with the following:

(i) personal grooming and dressing;

(ii) oral hygiene and denture care;

(iii) toileting and toilet hygiene;

(iv) eating during mealtime;

(v) encouraging and supporting residents to be independent or maintain independence if they use assistive devices (crutches, braces, walkers, wheelchairs) or prosthetic devices (glasses and hearing aids);

(vi) housekeeping;

(vii) self-administration of medication;

(viii) encouraging the resident to maintain his independence and sense of self-direction;

(ix) administering emergency first aid; and

(x) taking and recording oral temperatures.

(b) "Dependent" means a person who meets one or all of the following criteria:

(i) requires inpatient hospital or 24-hour continual nursing care that will last longer than 15 calendar days after the day on which the nursing care begins;

(ii) is unable to evacuate from the facility without the physical assistance of two persons.

(c) "Home-like" as used in statute and this rule means a place of residence which creates an atmosphere supportive of the resident's preferred lifestyle. Home-like is also supported by the use of residential building materials and furnishings.

(d) "Licensed health care professional" means a registered nurse, physician assistant, advanced nurse practitioner, or physician licensed by the Utah Department of Commerce who has education and experience to assess and evaluate the health care needs of the resident.

(e) "Semi-independent" means a person who is:

(i) physically disabled but able to direct his own care; or

(ii) cognitively impaired or physically disabled but able to evacuate from the facility or to a zone or area of safety with the physical assistance of one person.

(f) "Service Plan" means a written plan for services which meets the requirements of R432-270-14.

(g) "Services" means activities which help the residents develop skills to increase or maintain their level of psycho-social and physical functioning, or which assist them in activities of daily living.

(h) "Social care" means:

(i) providing opportunities for social interaction in the facility and in the community; and

(ii) providing services to promote independence and a sense of self-direction.

(i) "Unit" means an individual living space, including living and sleeping space, bathroom, and optional kitchen area.

R432-270-4. Licensure.

(1) Assisted living facilities may be licensed as large, small or limited capacity facilities.

(2) A large assisted living facility houses 17 or more residents.

(3) A small assisted living facility houses six to 16 residents.

(4) A limited capacity assisted living facility houses two to five residents.

R432-270-5. Licensee.

(1) The licensee must:

(a) ensure compliance with all federal, state, and local laws;

(b) assume responsibility for the overall organization, management, operation, and control of the facility;

(c) establish policies and procedures for the welfare of residents, the protection of their rights, and the general operation of the facility;

(d) implement a policy which ensures that the facility does not discriminate on the basis of race, color, sex, religion, ancestry, or national origin in accordance with state and federal law;

(e) secure and update contracts for required services not provided directly by the facility;

(f) respond to requests for reports from the Department; and

(g) appoint, in writing, a qualified administrator who shall assume full responsibility for the day-to-day operation and management of the facility. The licensee and administrator may be the same person.

(2) The licensee shall implement a quality assurance program to include a Quality Assurance Committee. The committee must:

(a) consist of at least the facility administrator and a health care professional, and

(b) meet at least quarterly to identify and act on quality issues.

(3) If the licensee is a corporation or an association, it shall maintain an active and functioning governing body to fulfill licensee duties and to ensure accountability.

R432-270-6. Administrator Qualifications.

(1) The administrator shall have the following qualifications:

(a) be 21 years of age or older;

(b) have knowledge of applicable laws and rules;

(c) have the ability to deliver, or direct the delivery of, appropriate care to residents;

(d) be of good moral character;

(e) complete the background criminal clearance defined in R432-35; and

(f) for all Type II facilities, complete a Department approved national certification program.

(2) In addition to R432-270-6(1) the administrator of a Type I facility shall have an associate degree or two years experience in a health care facility.

(3) In addition to R432-270-6(1) the administrator of a Type II small or limited-capacity assisted living facility shall have one or more of the following:

(a) an associate degree in a health care field;

(b) two years or more management experience in a health care field; or

(c) one year's experience in a health care field as a licensed health care professional.

(4) In addition to R432-270-6(1) the administrator of a Type II large assisted living facility must have one or more of the following:

(a) a State of Utah health facility administrator license;

(b) a bachelor's degree in a health care field, to include management training or one or more years of management experience;

(c) a bachelor's degree in any field, to include management training or one or more years of management experience and one year or more experience in a health care field; or

(d) an associates degree and four years or more management experience in a health care field.

R432-270-7. Administrator Duties.

(1) The administrator must:

(a) be on the premises a sufficient number of hours in the business day, and at other times as necessary, to manage and administer the facility;

(b) designate, in writing, a competent employee, 21 years of age or older, to act as administrator when the administrator is unavailable for immediate contact. It is not the intent of this subsection to permit a de facto administrator to replace the designated administrator.

(2) The administrator is responsible for the following:

(a) recruit, employ, and train the number of licensed and unlicensed staff needed to provide services;

(b) verify all required licenses and permits of staff and consultants at the time of hire or the effective date of contract;

(c) maintain facility staffing records for the preceding 12 months;

(d) admit and retain only those residents who meet admissions criteria and whose needs can be met by the facility;

(e) review at least quarterly every injury, accident, and incident to a resident or employee and document appropriate corrective action;

(f) maintain a log indicating any significant change in a resident's condition and the facility's action or response;

(g) complete an investigation whenever there is reason to believe that a resident has been subject to abuse, neglect, or exploitation;

(h) report all suspected abuse, neglect, or exploitation in accordance with Section 62A-3-302, and document appropriate action if the alleged violation is verified.

(i) notify the resident's responsible person and physician of significant changes or deterioration of the resident's health, and ensure the resident's transfer to an appropriate health care facility if the resident requires services beyond the scope of the facility's license;

(j) conduct and document regular inspections of the facility to ensure it is safe from potential hazards;

(k) complete, submit, and file all records and reports required by the Department;

(l) participate in a quality assurance program; and

(m) secure and update contracts for required professional and other services not provided directly by the facility.

(5) The administrator's responsibilities shall be included in a written and signed job description on file in the facility.

R432-270-8. Personnel.

(1) Qualified competent direct-care personnel shall be on the premises 24 hours a day to meet residents needs as determined by the residents' assessment and service plans. Additional staff shall be employed as necessary to perform

office work, cooking, housekeeping, laundering and general maintenance.

(2) The services provided or arranged by the facility shall be provided by qualified persons in accordance with the resident's written service plan.

(3) All personnel who provide personal care to residents in a Type I facility shall be at least 18 years of age and shall have related experience in the job assigned or receive on the job training.

(4) Personnel who provide personal care to residents in a Type II facility shall be certified nurse aides or complete a state certified nurse aide program after four months of the date of hire.

(5) Personnel shall be licensed, certified, or registered in accordance with applicable state laws.

(6) The administrator shall maintain written job descriptions for each position, including job title, job responsibilities, qualifications or required skills.

(7) Facility policies and procedures must be available to personnel at all times.

(8) All personnel must receive documented orientation to the facility and the job for which they are hired. Orientation shall include the following:

(a) job description;

(b) ethics, confidentiality, and residents' rights;

(c) fire and disaster plan;

(d) policy and procedures; and

(e) reporting responsibility for abuse, neglect and exploitation.

(9) Each employee shall receive documented in-service training. The training shall be tailored to include all of the following subjects that are relevant to the employee's job responsibilities:

(a) principles of good nutrition, menu planning, food preparation, and storage;

(b) principles of good housekeeping and sanitation;

(c) principles of providing personal and social care;

(d) proper procedures in assisting residents with medications;

(e) recognizing early signs of illness and determining when there is a need for professional help;

(f) accident prevention, including safe bath and shower water temperatures;

(g) communication skills which enhance resident dignity;

(h) first aid;

(i) resident's rights and reporting requirements of Section 62A-3-201 to 312; and

(j) special needs of the Dementia/Alzheimer's resident.

(10) An employee who reports suspected abuse, neglect, or exploitation shall not be subject to retaliation, disciplinary action, or termination by the facility for that reason alone. (11) The facility shall establish a personnel health program through written personnel health policies and procedures which protect the health and safety of personnel, residents and the public.

(12) The facility must complete an employee placement health evaluation to include at least a health inventory when an employee is hired. Facilities may use their own evaluation or a Department approved form.

(a) A health inventory shall obtain at least the employee's history of the following:

(i) conditions that may predispose the employee to acquiring or transmitting infectious diseases; and

(ii) conditions that may prevent the employee from performing certain assigned duties satisfactorily.

(b) The facility shall develop employee health screening and immunization components of the personnel health program.

(c) Employee skin testing by the Mantoux Method and follow up for tuberculosis shall be done in accordance with R388-804, Tuberculosis Control Rule.

(i) Skin testing must be conducted on each employee within two weeks of hire and after suspected exposure to a resident with active tuberculosis.

(ii) All employees with known positive reaction to skin tests are exempt from skin testing.

(d) All infections and communicable diseases reportable by law shall be reported to the local health department in accordance with R386-702-2.

(e) The facility shall comply with the Occupational Safety and Health Administration's Bloodborne Pathogen Standard.

R432-270-9. Volunteers.

(1) Volunteers may be used in the daily activities of the facility, but may not be included in the facility's employee staffing plan.

(2) Volunteers must be supervised by facility staff.

(3) Volunteers must be familiar with the facility's policies and procedures and with residents' rights.

R432-270-10. Residents' Rights.

(1) Assisted living facilities shall develop a written resident's rights statement based on this section.

(2) The administrator or designee shall give the resident a written description of the resident's legal rights upon admission, including the following:

(a) a description of the manner of protecting personal funds, in accordance with Section R432-270-20; and

(b) a statement that the resident may file a complaint with the state long term care ombudsman and any other advocacy group concerning resident abuse, neglect, or misappropriation of resident property in the facility.

(3) The administrator or designee shall notify the resident or the resident's responsible person at the time of admission, in writing and in a language and manner that the resident or the resident's responsible person understands, of the resident's rights and of all rules governing resident conduct and responsibilities during the stay in the facility.

(4) The administrator or designee must promptly notify in writing the resident or the resident's responsible person when there is a change in resident rights under state law.

(5) Resident rights include the following:

(a) the right to be treated with respect, consideration, fairness, and full recognition of personal dignity and individuality;

(b) the right to be transferred, discharged, or evicted by the facility only in accordance with the terms of the signed admission agreement;

(c) the right to be free of mental and physical abuse, and chemical and physical restraints;

(d) the right to refuse to perform work for the facility;

(e) the right to perform work for the facility if the facility consents and if:

(i) the facility has documented the resident's need or desire for work in the service plan,

(ii) the resident agrees to the work arrangement described in the service plan,

(iii) the service plan specifies the nature of the work performed and whether the services are voluntary or paid, and

(iv) compensation for paid services is at or above the prevailing rate for similar work in the surrounding community;

(f) the right to privacy during visits with family, friends, clergy, social workers, ombudsmen, resident groups, and advocacy representatives;

(g) the right to share a unit with a spouse if both spouses consent, and if both spouses are facility residents;

(h) the right to privacy when receiving personal care or services;

(i) the right to keep personal possessions and clothing as space permits;

(j) the right to participate in religious and social activities of the resident's choice;

(k) the right to interact with members of the community both inside and outside the facility;

(l) the right to send and receive mail unopened;

(m) the right to have access to telephones to make and receive private calls;

(n) the right to arrange for medical and personal care;

(o) the right to have a family member or responsible person informed by the facility of significant changes in the resident's cognitive, medical, physical, or social condition or needs;

(p) the right to leave the facility at any time and not be locked into any room, building, or on the facility premises during the day or night. This right does not prohibit the establishment of house rules such as locking doors at night for the protection of residents;

(q) the right to be informed of complaint or grievance procedures and to voice grievances and recommend changes in policies and services to facility staff or outside representatives without restraint, discrimination, or reprisal;

(r) the right to be encouraged and assisted throughout the period of a stay to exercise these rights as a resident and as a citizen;

(s) the right to manage and control personal funds, or to be given an accounting of personal funds entrusted to the facility, as provided in R432-270-20 concerning management of resident funds;

(t) the right, upon oral or written request, to access within 24 hours all records pertaining to the resident, including clinical records;

(u) the right, two working days after the day of the resident's oral or written request, to purchase at a cost not to exceed the community standard photocopies of the resident's records or any portion thereof;

(v) the right to personal privacy and confidentiality of personal and clinical records;

(w) the right to be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being; and

(x) the right to be fully informed in a language and in a manner the resident understands of the resident's health status and health rights, including the following:

(i) medical condition;

(ii) the right to refuse treatment;

(iii) the right to formulate an advance directive in accordance with UCA Section 75-2-1101; and

(iv) the right to refuse to participate in experimental research.

(6) The following items must be posted in a public area of the facility that is easily accessible by residents the following:

(a) the long term care ombudsmen's notification poster;

(b) information on Utah protection and advocacy systems; and

(c) a copy of the resident's rights.

(7) The facility shall have available in a public area of the facility the results of the current survey of the facility and any plans of correction.

(8) A resident may organize and participate in resident groups in the facility, and a resident's family may meet in the facility with the families of other residents.

(a) The facility shall provide private space for resident groups or family groups.

(b) Facility personnel or visitors may attend resident group or family group meetings only at the group's invitation.

(c) The administrator shall designate an employee to provide assistance and to respond to written requests that result from group meetings.

R432-270-11. Admissions.

(1) The facility shall have written admission, retention, and transfer policies that are available to the public upon request.

(2) Before accepting a resident, the facility must obtain sufficient information about the person's ability to function in the facility through the following:

(a) an interview with the resident and the resident's responsible person; and

(b) the completion of the resident assessment.

(3) If the Department determines during inspection or interview that the facility knowingly and willfully admits or retains residents who do not meet license criteria, then the Department may, for a time period specified, require that resident assessments be conducted by an individual who is independent from the facility.

(4) The facility shall accept and retain only residents who meet the following criteria:

(a) Residents admitted to a Type I facility shall meet the following criteria before being admitted:

(i) be ambulatory or mobile and be capable of taking life saving action in an emergency;

(ii) have stable health;

(iii) require no assistance or only limited assistance from facility staff in the activities of daily living; and

(iv) require and receive regular or intermittent care or treatment in the facility from a licensed health professional either through contract or by the facility, if permitted by facility policy.

(b) Residents admitted to a Type II facility may be independent and semi-independent, but shall not be dependent.

(5) Type I and Type II assisted living facilities shall not admit or retain a person who:

(a) manifests behavior that is suicidal, sexually or socially inappropriate, assaultive, or poses a danger to self or others; or

(b) has active tuberculosis or other chronic communicable diseases that cannot be treated in the facility or on an outpatient basis; or may be transmitted to other residents or guests through the normal course of activities; or

(c) requires inpatient hospital or long-term nursing care;

(6) In addition to the conditions outlined in R432-270-11(5), a Type I facility shall not accept or retain a person who:

(a) requires significant assistance during night sleeping hours;

(b) is unable to take life saving action in an emergency without the assistance of another person; or

(c) requires close supervision and a controlled environment.

(7) The prospective resident or the prospective resident's responsible person must sign a written admission agreement prior to admission. The admission agreement shall be kept on file by the facility and shall specify at least the following:

(a) room and board charges and charges for basic and optional services;

(b) provision for a 30-day notice prior to any change in established charges;

(c) admission, retention, transfer, discharge, and eviction policies;

(d) conditions under which the agreement may be terminated;

(e) the name of the responsible party;

(f) notice that the Department has the authority to examine resident records to determine compliance with licensing requirements; and

(g) refund provisions that address the following:

(i) thirty-day notices for transfer or discharge given by the facility or by the resident,

(ii) emergency transfers or discharges,

(iii) transfers or discharges without notice, and

(iv) death of a resident.

R432-270-12. Transfer or Discharge Requirements.

(1) A resident may be discharged, transferred, or evicted for one or more of the following reasons:

(a) The facility is no longer able to meet the resident's needs.

(b) The resident fails to pay for services as required by the admission agreement.

(c) The resident fails to comply with written policies or rules of the facility.

(d) The resident wishes to transfer.

(e) The facility ceases to operate.

(2) Prior to transferring or discharging a resident, the facility shall serve a transfer or discharge notice upon the resident and the resident's responsible person.

(a) The notice shall be either hand-delivered or sent by certified mail.

(b) The notice shall be made at least 30 days before the day on which the facility plans to transfer or discharge the resident, except that the notice may be made as soon as practicable before transfer or discharge if:

(i) the safety or health of persons in the facility is endangered; or

(ii) an immediate transfer or discharge is required by the resident's urgent medical needs.

(3) The notice of transfer or discharge shall:

(a) be in writing with a copy placed in the resident file;

(b) be phrased in a manner and in a language the resident can understand;

(c) detail the reasons for transfer or discharge;

(d) state the effective date of transfer or discharge;

(e) state the location to which the resident will be transferred or discharged;

(f) state that the resident may request a conference to discuss the transfer or discharge; and

(g) contain the following information:

(i) for facility residents who are 60 years of age or older, the name, mailing address, and telephone number of the State Long Term Care Ombudsman;

(ii) for facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under part C of the Developmental Disabilities Assistance and Bill of Rights Act; and

(iii) for facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

(4) The facility shall provide sufficient preparation and orientation to a resident to ensure a safe and orderly transfer or discharge from the facility.

(5) The resident or the resident's responsible person may contest a transfer or discharge. If the transfer or discharge is contested, the facility shall provide an informal conference, except where undue delay might jeopardize the health, safety, or well-being of the resident or others.

(a) The resident or the resident's responsible person must request the conference within five calendar days of the day of receipt of notice of discharge to determine if a satisfactory resolution can be reached.

(b) Participants in the conference shall include the facility representatives, the resident or the resident's responsible person, and any others requested by the resident or the resident's responsible person.

R432-270-13. Resident Assessment.

(1) Each person admitted to an assisted living facility shall have a personal physician or a licensed practitioner prior to admission.

(2) A signed and dated resident assessment shall be completed on each resident prior to admission and at least annually thereafter.

(3) In a Type I facility, the resident assessment shall be completed and signed by a physician, an advanced practice registered nurse, physician assistant, or a registered nurse.

(4) In a Type II facility, the resident assessment shall be completed and signed by the facility's registered nurse.

(5) The resident assessment shall include a signed statement, by the health professional completing the resident assessment, that the resident is able to function in either a Type I or Type II assisted living facility.

(6) The resident assessment shall document the resident's cognitive, physical, medical, and social conditions.

(7) The facility shall use a resident assessment form that is approved and reviewed by the Department to document the resident assessments.

(8) The facility shall revise and update each resident's assessment when there is a significant change in the resident's cognitive, medical, physical, or social condition.

(9) A Type I facility shall conduct a semi annual resident review in each 12-month period.

(a) The semi-annual review shall document the assistance required by the resident in the activities of daily living.

(b) The semi annual resident review may be completed and signed by facility staff other than a licensed health care professional.

(10) A Type II facility shall conduct a semi-annual resident assessment review.

(a) The semi-annual resident assessment review shall document changes in a resident's cognitive, medical, physical, and social conditions.

(b) A registered nurse must complete and sign the resident assessment.

R432-270-14. Service Plan.

(1) Each resident must have an individualized service plan that is consistent with the resident's unique cognitive, medical, physical, and social needs, and is developed within seven calendar days of the day the facility admits the resident. The facility shall periodically revise the service plan as needed.

(2) The facility shall use the resident assessment to develop, review, and revise the service plan for each resident.

(3) The service plan must be prepared by a service coordinator who is an employee of the assisted living facility. The resident or the resident's responsible person shall actively participate with the service coordinator in developing the service plan.

(4) The service plan shall include a written description of the following:

(a) what services are provided;

(b) who will provide the services, including the resident's significant others who may participate in the delivery of services;

(c) how the services are provided;

(d) the frequency of services; and

(e) changes in services and reasons for those changes.

R432-270-15. Nursing Services.

(1) The facility must develop written policies and procedures defining the level of nursing services provided by the facility.

(a) A Type II assisted living facility shall employ or contract with a registered nurse to provide or supervise nursing services to include:

(i) a nursing assessment on each resident;

(ii) general health monitoring on each resident; and

(iii) routine nursing tasks, including those that may be delegated to unlicensed assistive personnel in accordance with the Utah Nurse Practice Act R156-31-603.

(b) A Type I assisted living facility may provide nursing care according to facility policy. If a Type I assisted living facility chooses to provide nursing services, the nursing services must be provided in accordance with R432-270-15(1)(a)(i) thru (iii).

(2) Type I and Type II assisted living facilities shall not provide skilled nursing care, but must assist the resident in obtaining required services.

(3) To determine whether a nursing service is skilled, the following criteria shall apply:

(a) The complexity or specialized nature of the prescribed services can be safely or effectively performed only by, or under the close supervision of licensed health care professional personnel.

(b) Care is needed to prevent, to the extent possible, deterioration of a condition or to sustain current capacities of a resident.

R432-270-16. Arrangements for Medical or Dental Care.

(1) The facility shall assist residents in arranging access for ancillary services for medically related care including physician, dentist, pharmacist, therapy, podiatry, hospice, home health, and other services necessary to support the resident.

(2) The facility shall arrange for care through one or more of the following methods:

(a) notifying the resident's responsible person;

(b) arranging for transportation to and from the practitioner's office; or

(c) arrange for a home visit by a health care professional.

(3) The facility must notify a physician or other health care professional when the resident requires immediate medical attention.

R432-270-17. Activity Program.

(1) Residents shall be encouraged to maintain and develop their fullest potential for independent living through participation in activity and recreational programs.

(2) The facility shall provide opportunities for the following:

(a) socialization activities;

(b) independent living activities to foster and maintain independent functioning;

(c) physical activities; and

(d) community activities to promote resident participation in activities away from the facility.

(3) The administrator shall designate an activity coordinator to direct the facility's activity program. The activity coordinator's duties include the following:

(a) coordinate all recreational activities, including volunteer and auxiliary activities;

(b) plan, organize, and conduct the residents' activity program with resident participation; and

(c) develop and post monthly activity calendars, including information on community activities, based on residents' needs

and interests.

(3) The facility shall provide sufficient equipment, supplies, and indoor and outdoor space to meet the recreational needs and interests of residents.

(4) The facility shall provide storage for recreational equipment and supplies. Locked storage must be provided for potentially dangerous items such as scissors, knives, and toxic materials.

R432-270-18. Medication Administration.

(1) A licensed health care professional must assess each resident to determine what level and type of assistance is required for medication administration. The level and type of assistance provided shall be documented on the resident's service plan.

(2) The resident's medication program shall include one or all of the following:

(a) The resident is able to self-administer medications.

(i) Residents who have been assessed to be able to self-administer medications may keep prescription medications in their rooms.

(ii) If more than one resident resides in a unit, the facility must assess each person's ability to safely have medications in the unit. If safety is a factor, a resident shall keep his medication in a locked container in the unit.

(b) Facility staff may assist residents who self-medicate by:

(i) reminding the resident to take the medication;

(ii) opening medication containers;

(iii) reading the instructions on container labels;

(iv) checking the dosage against the label of the container;

(v) reassuring the resident that the dosage is correct;

(vi) observing a resident take the medication; and

(vii) reminding the resident or the resident's responsible person when the prescription needs to be refilled.

(c) Family members or a significant other may set up medications in a package which identifies the medication and time to administer. If a family member or significant other assists with medication administration, they shall sign a waiver indicating that they agree to assume the responsibility to fill prescriptions, administer medication, and document that the medication has been administered. The facility staff may assist the resident to self medicate by:

(i) reminding residents to take medications; and

(ii) opening the container at the resident's request.

(d) Unlicensed assistive personnel may assist with medication administration under the supervision of the facility's registered nurse.

(i) The facility's registered nurse may delegate the task of assisting with medication administration to unlicensed assistive personnel in accordance with the Nurse Practice Act R156-31-603.

(ii) The registered nurse who delegates the assisting with medication administration must verify and evaluate the practitioner's orders, perform a nursing assessment, and determine whether unlicensed assistive personnel can safely perform the assisting with administration of medications.

(iii) The medications must be administered according to a plan of care developed by the registered nurse.

(iv) The registered nurse shall provide and document supervision, evaluation, and training of unlicensed assistive personnel assisting with medication administration.

(v) The delegating nurse or another registered nurse shall be readily available either in person or by telecommunication.

(e) The resident may have the facility's licensed nurse administer medications.

(i) The service plan shall document instructions for medication administration.

(ii) All medications shall be prescribed in writing for the resident by the resident's licensed practitioner.

(3) The facility must review all resident medications at least every six months unless the resident has been assessed to safely self-administer medications.

(a) Medication records shall include the following:

(i) the resident's name;

(ii) the name of the prescribing practitioner;

(iii) the name of the medication, including prescribed dosage;

(iv) the times and dates administered;

(v) the method of administration;

(vi) signatures of personnel administering the medication; and

(vii) the review date.

(b) Any change in the dosage or schedule of medication administration shall be made by the resident's licensed practitioner and be documented in the medication record. All personnel shall be notified of the medication change.

(c) The facility shall keep on file a list of possible reactions and precautions to any medications that facility staff assist the resident to administer.

(6) The licensed practitioner shall be notified when medications errors occur.

(7) Medications shall be stored in a locked central storage area to prevent unauthorized access.

(a) If medication is stored in a central location, the resident shall have timely access to the medication.

(b) Medications that require refrigeration shall be stored separately from food items and at temperatures between 36 - 46 degrees F.

(c) The administration, storage, and handling of oxygen must comply with the requirements of NFPA 99 which is adopted and incorporated by reference.

(8) The facility shall develop and implement a policy for disposing of unused, outdated, or recalled medications.

(a) The facility shall return a resident's medication to the resident or to the resident's responsible person upon discharge.

(b) The administrator shall document the return to the resident or the resident's responsible person of medication stored in a central storage.

R432-270-19. Management of Resident Funds.

(1) Residents have the right to manage and control their financial affairs. The facility may not require residents to deposit their personal funds or valuables with the facility.

(2) The facility need not handle residents' cash resources or valuables. However, upon written authorization by the resident or the resident's responsible person, the facility may hold, safeguard, manage, and account for the resident's personal funds or valuables deposited with the facility, in accordance

with the following:

(a) The licensee shall establish and maintain on the residents' behalf a system that assures a full, complete, and separate accounting according to generally accepted accounting principles of each resident's personal funds entrusted to the facility. The system shall:

(i) preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident, and preclude facility personnel from using residents' monies or valuables as their own;

(ii) separate residents' monies and valuables intact and free from any liability that the licensee incurs in the use of its own or the facility's funds and valuables;

(iii) maintain a separate account for resident funds for each facility and not commingle such funds with resident funds from another facility;

(iv) for records of residents' monies which are maintained as a drawing account, include a control account for all receipts and expenditures and an account for each resident and supporting receipts filed in chronological order;

(v) keep each account with columns for debits, credits, and balance; and

(vi) include a copy of the receipt that it furnished to the residents for funds received and other valuables entrusted to the licensee for safekeeping.

(b) The facility shall make individual financial records available on request through quarterly statements to the resident or the resident's legal representative.

(c) The facility shall purchase a surety bond or otherwise provide assurance satisfactory to the Department that all resident personal funds deposited with the facility are secure.

(d) The facility shall deposit, within five days of receipt, all resident monies that are in excess of $150 in an interest-bearing bank account, that is separate from any of the facility's operating accounts, in a local financial institution.

(i) Interest earned on a resident's bank account shall be credited to the resident's account.

(ii) In pooled accounts, there shall be a separate accounting for each resident's share, including interest.

(e) The facility shall maintain a resident's personal funds that do not exceed $150 in a non-interest-bearing account, interest-bearing account, or petty cash fund.

(f) Upon discharge of a resident with funds or valuables deposited with the facility, the facility shall that day convey the resident's funds, and a final accounting of those funds, to the resident or the resident's legal representative. Funds and valuables kept in an interest-bearing account shall be accounted for and made available within three working days.

(g) Within 30 days following the death of a resident, except in a medical examiner case, the facility shall convey the resident's valuables and funds entrusted to the facility, and a final accounting of those funds, to the individual administering the resident's estate.

R432-270-20. Facility Records.

(1) The facility must maintain accurate and complete records. Records shall be filed, stored safely, and be easily accessible to staff and the Department.

(2) Records shall be protected against access by unauthorized individuals.

(3) The facility shall maintain personnel records for each employee and shall retain such records for at least three years following termination of employment. Personnel records must include the following:

(a) employee application;

(b) date of employment;

(c) termination date;

(d) reason for leaving;

(e) documentation of CPR and first aid training;

(f) health inventory;

(g) food handlers permits;

(h) TB skin test documentation; and

(i) documentation of criminal background check.

(4) The facility must maintain in the facility a separate record for each resident that includes the following:

(a) the resident's name, date of birth, and last address;

(b) the name, address, and telephone number of the person who administers and obtains medications, if this person is not facility staff;

(c) the name, address, and telephone number of the individual to be notified in case of accident or death;

(d) the name, address, and telephone number of a physician and dentist to be called in an emergency;

(e) the admission agreement;

(f) the resident assessment; and

(g) the resident service plan.

(5) Resident records must be retained for at least three years following discharge.

R432-270-21. Food Services.

(1) Facilities must have the capability to provide three meals a day, seven days a week, to all residents, plus snacks.

(a) The facility shall maintain onsite a one-week supply of nonperishable food and a three day supply of perishable food as required to prepare the planned menus.

(b) There shall be no more than a 14 hour interval between the evening meal and breakfast, unless a nutritious snack is available in the evening.

(c) The facility food service must comply with the following:

(i) All food shall be of good quality and shall be prepared by methods that conserve nutritive value, flavor, and appearance.

(ii) The facility shall ensure food is palatable, attractively served, and delivered to the resident at the appropriate temperature.

(iii) Powdered milk may only be used as a beverage, upon the resident's request, but may be used in cooking and baking.

(2) The facility shall provide adaptive eating equipment and utensils for residents as needed.

(3) A different menu shall be planned and followed for each day of the week.

(a) All menus must be approved and signed by a certified dietitian.

(b) Cycle menus shall cover a minimum of three weeks.

(c) The current week's menu shall be posted for residents' viewing.

(d) Substitutions to the menu that are actually served to the

residents shall be recorded and retained for three months for review by the Department.

(4) Meals shall be served in a designated dining area suitable for that purpose or in resident rooms upon request by the resident.

(5) Residents shall be encouraged to eat their meals in the dining room with other residents.

(6) Inspection reports by the local health department shall be maintained at the facility for review by the Department.

(7) If the facility admits residents requiring therapeutic or special diets, the facility shall have an approved dietary manual for reference when preparing meals. Dietitian consultation shall be provided at least quarterly and documented for residents requiring therapeutic diets.

(8) The facility shall employ food service personnel to meet the needs of residents.

(a) While on duty in food service, the cook and other kitchen staff shall not be assigned concurrent duties outside the food service area.

(b) All personnel who prepare or serve food shall have a current Food Handler's Permit.

(c) Dietary staff must receive a minimum of six hours of documented in-service training each year.

(9) Food service shall comply with the Utah Department of Health Food Service Sanitation Regulations, R392-100.

R432-270-22. Housekeeping Services.

(1) The facility shall employ housekeeping staff to maintain both the exterior and interior of the facility.

(2) The facility shall designate a person to direct housekeeping services. This person shall:

(a) post routine laundry, maintenance, and cleaning schedules for housekeeping staff.

(b) ensure all furniture, bedding, linens, and equipment are clean before use by another resident.

(3) The facility shall control odors by maintaining cleanliness.

(4) There shall be a trash container in every occupied room.

(5) All cleaning agents, bleaches, insecticides, or poisonous, dangerous, or flammable materials shall be stored in a locked area to prevent unauthorized access.

(6) Housekeeping personnel shall be trained in preparing and using cleaning solutions, cleaning procedures, proper use of equipment, proper handling of clean and soiled linen, and procedures for disposal of solid waste.

(7) Bathtubs, shower stalls, or lavatories shall not be used as storage places.

(8) Throw or scatter rugs that present a tripping hazard to residents are not permitted.

R432-270-23. Laundry Services.

(1) The facility shall provide laundry services to meet the needs of the residents, including sufficient linen supply to permit a change in bed linens at least twice a week.

(2) The facility shall inform the resident or the resident's responsible person in writing of the facility's laundry policy for residents' personal clothing.

(3) Food may not be stored, prepared, or served in any laundry area.

(4) The facility shall make available for resident use, the following:

(a) at least one washing machine and one clothes dryer; and

(b) at least one iron and ironing board.

R432-270-24. Maintenance Services.

(1) The facility shall conduct maintenance, including preventive maintenance, according to a written schedule to ensure that the facility equipment, buildings, fixtures, spaces, and grounds are safe, clean, operable, and in good repair.

(2) Entrances, exits, steps, and outside walkways shall be maintained in a safe condition, free of ice, snow, and other hazards.

(3) Electrical systems, including appliances, cords, equipment call lights, and switches shall be maintained to guarantee safe functioning and compliance with the National Electric Code, NFPA 70.

(4) The facility shall inspect and clean or replace air filters installed in heating, air conditioning, and ventilation systems according to manufacturers specifications.

(5) A pest control program shall be conducted in the facility buildings and on the grounds by a licensed pest control contractor or a qualified employee, certified by the State, to ensure the absence of vermin and rodents. Documentation of the pest control program shall be maintained for Department review.

(6) The facility shall document maintenance work performed.

(7) Lighting levels shall meet or exceed the minimum standards as outlined in "Lighting for Health Care Facilities", Illuminating Engineering Society of North America, 1995 edition.

(8) Hot water temperature controls shall automatically regulate temperatures of hot water delivered to plumbing fixtures used by residents. The facility shall maintain hot water delivered to public and resident care areas at temperatures between 105 - 120 degrees F.

R432-270-25. Disaster and Emergency Preparedness.

(1) The facility is responsible for the safety and well-being of residents in the event of an emergency or disaster.

(2) The licensee and the administrator are responsible to develop and coordinate plans with state and local emergency disaster authorities to respond to potential emergencies and disasters. The plan shall outline the protection or evacuation of all residents, and include arrangements for staff response or provisions of additional staff to ensure the safety of any resident with physical or mental limitations.

(a) Emergencies and disasters include fire, severe weather, missing residents, death of a resident, interruption of public utilities, explosion, bomb threat, earthquake, flood, windstorm, epidemic, or mass casualty.

(b) The emergency and disaster response plan shall be in writing and distributed or made available to all facility staff and residents to assure prompt and efficient implementation.

(c) The licensee and the administrator must review and update the plan as necessary to conform with local emergency

plans. The plan shall be available for review by the Department.

(3) The facility's emergency and disaster response plan must address the following:

(a) the names of the person in charge and persons with decision-making authority;

(b) the names of persons who shall be notified in an emergency in order of priority;

(c) the names and telephone numbers of emergency medical personnel, fire department, paramedics, ambulance service, police, and other appropriate agencies;

(d) instructions on how to contain a fire and how to use the facility alarm systems;

(e) assignment of personnel to specific tasks during an emergency;

(f) the procedure to evacuate and transport residents and staff to a safe place within the facility or to other prearranged locations;

(g) instructions on how to recruit additional help, supplies, and equipment to meet the residents' needs after an emergency or disaster;

(h) delivery of essential care and services to facility occupants by alternate means;

(i) delivery of essential care and services when additional persons are housed in the facility during an emergency; and

(j) delivery of essential care and services to facility occupants when personnel are reduced by an emergency.

(4) The facility must maintain safe ambient air temperatures within the facility.

(a) Emergency heating must have the approval of the local fire department.

(b) Ambient air temperatures of 58 degrees F. or below may constitute an imminent danger to the health and safety of the residents in the facility. The person in charge shall take immediate action in the best interests of the residents.

(c) The facility shall have, and be capable of implementing, contingency plans regarding excessively high ambient air temperatures within the facility that may exacerbate the medical condition of residents.

(5) Personnel and residents shall receive instruction and training in accordance with the plans to respond appropriately in an emergency. The facility shall:

(a) annually review the procedures with existing staff and residents and carry out unannounced drills using those procedures;

(b) hold simulated disaster drills semi-annually;

(c) hold simulated fire drills quarterly on each shift for staff and residents in accordance with Rule R710-3; and

(d) document all drills, including date, participants, problems encountered, and the ability of each resident to evacuate.

(6) The administrator shall be in charge during an emergency. If not on the premises, the administrator shall make every effort to report to the facility, relieve subordinates and take charge.

(7) The facility shall provide in-house all equipment and supplies required in an emergency including emergency lighting, heating equipment, food, potable water, extra blankets, first aid kit, and radio.

(8) The following information shall be posted in prominent locations throughout the facility:

(a) The name of the person in charge and names and telephone numbers of emergency medical personnel, agencies, and appropriate communication and emergency transport systems; and

(b) evacuation routes, location of fire alarm boxes, and fire extinguishers.

R432-270-26. First Aid.

(1) There shall be one staff person on duty at all times who has training in basic first aid, the Heimlich maneuver, certification in cardiopulmonary resuscitation and emergency procedures to ensure that each resident receives prompt first aid as needed.

(2) First aid training refers to any basic first aid course approved by the American Red Cross or Utah Emergency Medical Training Council.

(3) The facility must have a first aid kit available at a specified location in the facility.

(4) The facility shall have a current edition of a basic first aid manual approved by the American Red Cross, the American Medical Association, or a state or federal health agency.

(5) The facility must have a clean up kit for blood borne pathogens.

R432-270-27. Pets.

(1) The facility may allow residents to keep household pets such as dogs, cats, birds, fish, and hamsters if permitted by local ordinance and by facility policy.

(2) Pets must be kept clean and disease-free.

(3) The pets' environment shall be kept clean.

(4) Small pets such as birds and hamsters shall be kept in appropriate enclosures.

(5) Pets that display aggressive behavior are not permitted in the facility.

(6) Pets that are kept at the facility or are frequent visitors must have current vaccinations

(7) Upon approval of the administrator, family members may bring residents' pets to visit.

(8) Each facility with birds shall have procedures which prevent the transmission of psittacosis. Procedures shall ensure the minimum handling and placing of droppings into a closed plastic bag for disposal.

(9) Pets are not permitted in central food preparation, storage, or dining areas or in any area where their presence would create a significant health or safety risk to others.

R432-270-28. Respite Services.

(1) Assisted Living facilities may offer respite services and are not required to obtain a respite license from the Utah Department of Health.

(2) The purpose of respite is to provide intermittent, time limited care to give primary caretakers relief from the demands of caring for a person.

(3) Respite services may be provided at an hourly rate or daily rate, but shall not exceed 14-days for any single respite stay. Stays which exceed 14 days shall be considered a non-respite assisted living facility admission, subject to the requirements of R432-270.

(4) The facility shall coordinate the delivery of respite services with the recipient of services, case manager, if one exists, and the family member or primary caretaker.

(5) The facility shall document the person's response to the respite placement and coordinate with all provider agencies to ensure an uninterrupted service delivery program.

(6) The facility must complete a service agreement to serve as the plan of care. The service agreement shall identify the prescribed medications, physician treatment orders, need for assistance for activities of daily living and diet orders.

(7) The facility shall have written policies and procedures approved by the Department prior to providing respite care.

(8) Policies and procedures must be available to staff regarding the respite care clients which include:

(a) medication administration;

(b) notification of a responsible party in the case of an emergency;

(c) service agreement and admission criteria;

(d) behavior management interventions;

(e) philosophy of respite services;

(f) post-service summary;

(g) training and in-service requirement for employees; and

(h) handling personal funds.

(8) Persons receiving respite services shall be provided a copy of the Resident Rights documents upon admission.

(9) The facility shall maintain a record for each person receiving respite services which includes:

(a) a service agreement;

(b) demographic information and resident identification data;

(c) nursing notes;

(d) physician treatment orders;

(e) records made by staff regarding daily care of the person in service;

(f) accident and injury reports; and

(g) a post-service summary.

(10) Retention and storage of respite records shall comply with R432-270-21(1)-(2).

(11) If a person has an advanced directive, a copy shall be filed in the respite record and staff shall be informed of the advanced directive.

R432-270-29. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 or be assessed a penalty not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.

KEY: health facilities
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26-21-1

R432. Health, Health Systems Improvement, Health Facility Licensure.

R432-300. Small Health Care Facility - Type N.

R432-300-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-300-2. Purpose.

The purpose of this rule is to establish standards for protection of the health, safety, and welfare of individuals who receive nursing care in privately owned homes.

R432-300-3. Time for Compliance.

All facilities governed by these rules shall be in full compliance at the time of licensure.

R432-300-4. Definitions.

(1) Refer to common definitions R432-1-3, in addition;

(2) "Owner" means a licensed nurse who resides in the facility and provides direct care to residents in the facility as opposed to simply working a duty shift in the facility.

(3) "Small Health Care Facility - Type N" means a home or a residence occupied by the owner, who is a licensed nurse, that provides protected living arrangements plus nursing care and services on a daily basis for two to three individuals unrelated to the owner of the facility.

R432-300-5. License Required.

A license is required to operate a Small Health Care Facility Type N, see R432-2.

R432-300-6. Criteria for Type N Facility.

The licensee shall meet the following criteria to obtain a license for a Small Health Care Facility - Type N:

(1) provide care in a residence where the owner lives full time;

(2) meet local zoning requirements to allow the facility to be operated at the given address;

(3) obtain a certificate of fire clearance annually from the local fire marshal having jurisdiction;

(4) have a physician assessment and approval for each resident's admission;

(5) provide daily, licensed nursing care; and

(6) provide 24-hour direct care staff available on the premises.

R432-300-7. Physical Environment.

(1) Each facility must provide comfortable living accommodations and privacy for residents who live in the facility.

(2) Bedrooms may be private or semi-private.

(a) Single-bed rooms shall have a minimum of 100 square feet of floor space.

(b) Multiple-bed rooms shall have a minimum of 80 square feet of floor space per bed and shall be limited to two beds.

(c) Beds shall be placed at least three feet away from each other.

(d) Owner's family members or staff shall not share sleeping quarters with residents.

(e) Each resident shall have a separate standard sized bed.

(f) No room ordinarily used for other purposes (such as a hall, corridor, unfinished attic, garage, storage area, shed or similar detached building) shall be used as a sleeping room for a resident.

(g) Each bedroom shall be provided with light and ventilation.

(h) Each bedroom shall have a window to the outside which opens easily. Windows must have insect screens.

(i) Each room shall have a closet or space suitable for hanging clothing and personal belongings.

(j) Each resident shall have a reading lamp.

(3) Toilets and bathrooms shall provide privacy, be well-ventilated, and be accessible to and usable by all persons accepted for care.

(a) Grab bars which comply with ADAAG shall be placed around each toilet, tub, and shower.

(b) If the licensee admits a resident with disabilities, the bath, shower, sink, and toilet must be equipped for use by persons with disabilities in accordance with ADAAG.

(4) Heating, air conditioning, and ventilating systems must provide comfortable temperatures for the resident.

(a) Heating system shall be capable of maintaining temperatures of 80 degrees F. in areas occupied by residents.

(b) Cooling system shall be capable of maintaining temperatures of 72 degrees F. in areas occupied by residents.

(c) Facilities licensed after July 1, 1998, must comply with ventilation and minimum total air change requirements as outlined in R432-6-22 Table 2, which is adopted and incorporated by reference.

(5) The facility must have equipment to provide essential lighting and heating during an emergency. All emergency heating devices must be approved by the local fire jurisdiction.

(6) Residents shall be housed on the main floor only, unless an outside exit leading to the ground grade level is provided from any upper or lower levels.

(7) At least one building entrance shall be accessible to persons with physical disabilities.

R432-300-8. Administration and Organization.

(1) The licensee is responsible for compliance with Utah law and licensure requirements, management, operation, and control of the facility.

(2) The licensee is responsible to establish and implement facility policies and procedures. Policies and procedures must reflect current facility practice.

(3) The licensee must have experience in administering a health facility or two years experience working in a health care facility.

(4) The owner must be a licensed nurse and provide nursing coverage on a daily basis.

(5) Facilities licensed prior to July 1, 1998, who do not have licensed nurses residing in the facility, shall provide 24 hour certified nurse aide coverage.

(6) The licensee must employ sufficient staff to meet the needs of the residents.

(7) All employees must be 18 years of age, and successfully complete an orientation program in order to provide personal care and demonstrate competency.

(a) The licensee shall orient employees to the residents'

daily routine and train employees to assist the residents in activities of daily living.

(b) All staff shall be registered, certified or licensed as required by the Utah Department of Commerce.

(c) Registration, license and certificates must be current, filed in the personnel files, and presented to the licensee within 45-days of employment.

(8) The licensee shall establish and implement written policies and procedures for a personnel health program to protect the health and safety of personnel and clients commensurate with the service offered. The policies shall include an employee health evaluation.

(a) Each employee shall, upon hire, complete a health evaluation that includes a health inventory.

(b) The health inventory must document the employee's health history of the following:

(i) conditions that predispose the employee to acquiring or transmitting infectious diseases;

(ii) conditions which may prevent the employee from performing certain assigned duties satisfactorily;

(c) Employee skin testing by the Mantoux Method and follow up for tuberculosis shall be done in accordance with R388-804, Tuberculosis Control Rule.

(i) Skin testing shall be conducted on each employee within two weeks of hire and after suspect exposure to a person with active tuberculosis.

(ii) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(d) All infections and communicable diseases reportable by law shall be reported by the facility to the local health department in accordance with R386-702-2.

R432-300-9. Facility Records.

(1) The licensee must maintain accurate and complete records. Records shall be filed, stored safely, and be easily accessible to staff and the Department.

(2) Records shall be protected against access by unauthorized individuals.

(3) The licensee shall maintain personnel records for each employee and retain such records for at least three years following termination of employment. Personnel records must include the following:

(a) employee application;

(b) date of employment and initial policies and procedures orientation;

(c) termination date;

(d) reason for leaving;

(e) documentation of cardio-pulmonary resuscitation, first aid, and emergency procedures training;

(f) health inventory;

(g) food handlers permits;

(h) TB skin test documentation;

(i) documentation of criminal background check; and

(j) certifications, registration, and licenses as required.

(4) The licensee must maintain in the facility a separate record for each resident that includes the following:

(a) the resident's name, date of birth, and last address;

(b) the name, address, and telephone number of the person who administers and obtains medications, if this is not facility staff;

(c) the name, address, and telephone number of the individual to be notified in case of accident or death;

(d) the name, address, and telephone number of a physician and dentist to be called in an emergency;

(e) admission diagnoses and reason for admission;

(f) any known allergies;

(g) the admission agreement;

(h) the acceptance appraisal;

(i) a physician's assessment;

(j) a resident assessment;

(k) a written plan of care;

(l) physician orders;

(m) daily nurses notes including temperature, pulse, respirations, blood pressure, height, and height notations, when indicated;

(n) if entrusted to the facility, a record of the resident's cash resources and valuables; and

(o) incident and accident reports.

(5) Resident records must be retained for at least seven years following discharge.

R432-300-10. Acceptance and Retention of Residence.

(1) Each licensee must establish acceptance criteria which includes:

(a) the resident's health needs;

(b) the residents's ability to perform activities of daily living; and

(c) the ability of the facility to address the residents needs.

(2) A resident shall not be accepted nor retained by a Type "N" Limited Capacity Small Health Care Facility when:

(a) The resident has active tuberculosis or serious communicable diseases;

(b) The resident requires inpatient hospital care; or

(c) The resident has a mental illness that manifests behavior which is suicidal, assaultive, or harmful to self or others.

(3) The licensee shall request that the family or responsible person relocate the resident within seven days if the resident requires care which cannot be provided in the Type N facility.

(4) If the department determines at the time of inspection that the licensee knowingly and willfully admits or retains residents who do not meet the licensure criteria, then the department may, for a time period specified, require that the resident assessment be conducted by an approved individual who is independent of the facility.

R432-300-11. Personal Physician.

(1) Each resident shall have a personal physician and have a physician's assessment completed prior to admission.

(2) The physician's signed assessment shall document:

(a) that the resident is capable of functioning in a limited capacity Type N Small Health Care Facility;

(b) that the resident is free of communicable diseases or any condition which would prevent admission to the facility;

(c) a list of current medications including dosage, time of administration, route, and assistance required;

(d) type of diet and restrictions or special instructions;

(e) any known allergies; and

(f) any physical or mental limitations, or restrictions on activity.

R432-300-12. Emergency Procedures.

The licensee must develop and implement policies and procedures to safely evacuate disabled and bed fast residents in the event of an emergency without impeding the self-evacuation of other residents.

R432-300-13. Nursing Care.

(1) Each Type N facility must provide nursing care services to meet the needs of the residents.

(2) Licensed nurses shall be on-site working directly with residents a minimum of 24 minutes per patient per day. Chronically ill patients may require a minimum of 45 minutes per patient per day.

(3) Licensed nurses shall practice nursing in accordance with the Utah Nurse Practice Act Title 58, Chapter 31b.

(4) Licensed nurses shall have the following responsibilities:

(a) direct the implementation of physician's orders;

(b) plan and direct the delivery of nursing care, treatments, procedures, and other services to meet the needs of the residents;

(c) review the health care needs of each resident admitted to the facility and develop resident care plans according to the resident's needs and the physician's orders;

(d) review the resident's medication to ensure accuracy;

(e) ensure that nursing notes describe the care rendered including the resident's response;

(f) supervise staff to assure they perform restorative measures in their daily care of residents;

(g) teach and coordinate habilitative and rehabilitative care to promote and maintain optimal physical and mental functioning of the resident; and

(h) plan and conduct documented orientation and in-service programs for staff.

(5) The licensed nurse must develop a health services policy and procedure manual that is to be reviewed and updated by the licensed nurse at least annually.

(a) The manual must be accessible to all staff and be available for review by the Department.

(b) The policy and procedure manual must address the following:

(i) bathing;

(ii) positioning;

(iii) enema administration;

(iv) decubitus prevention and care;

(v) bed making;

(vi) isolation procedures;

(vii) clinitest procedures;

(viii) telephone orders;

(ix) charting;

(x) rehabilitative nursing;

(xi) diets and feeding residents; and

(xi) oral hygiene and denture care;

(6) Each resident's care plan shall include measures to prevent and reduce incontinence.

(a) The licensed nurse shall assess each resident to determine the resident's ability to participate in a bowel and bladder management program.

(b) An individualized plan for each incontinent resident shall begin within two weeks of the initial assessment.

(c) The licensed nurse shall document a weekly evaluation of the resident's performance in the bowel/bladder management program.

(d) Fluid intake and output shall be recorded for each resident and evaluated at least weekly, as ordered by the physician or nurse.

(e) Physician's or nurse's orders shall be re-evaluated periodically.

(7) The licensee must ensure that staff are trained in rehabilitative nursing.

(a) Rehabilitative nursing services shall be performed daily for residents who require such services and shall be documented in the resident's record when provided.

(b) Rehabilitative services shall be provided to maintain function or to improve the resident's ability to carry out the activities of daily living.

(c) Rehabilitative nursing services shall include the following:

(i) turning and positioning of residents;

(ii) assisting residents to ambulate;

(iii) improving resident's range of motion;

(iv) restorative feeding;

(v) bowel and bladder retraining;

(vi) teaching residents self-care skills;

(vii) teaching residents transferring skills;

(viii) teaching residents self-administration of medications, as appropriate; and

(ix) taking measures to prevent secondary disabilities such as contractions and decubitus ulcers.

R432-300-14. General Resident Care Policies.

(1) Each resident shall be treated as an individual with dignity and respect in accordance with Residents' Rights (R432-200-12).

(2) The licensee shall develop and implement resident care policies to be reviewed at least annually.

(3) These policies shall address the following:

(a) Each resident upon admission shall be oriented to the facility, services, and staff.

(b) Each admission shall comply with R432-300-11.

(c) Each resident shall receive care to ensure good personal hygiene. This care shall include bathing, oral hygiene, shampoo and hair care, shaving or beard trimming, fingernail and toenail care.

(d) Linens and other items in contact with the resident shall be changed weekly or as the item is soiled.

(e) Each resident shall be encouraged and assisted to achieve and maintain the highest level of functioning and independence including:

(i) teaching the resident self-care,

(ii) assisting residents to adjust to their disabilities and prosthetic devices,

(iii) directing residents in prescribed therapy exercises, and

(iv) redirecting residents interests as necessary.

(f) Each resident shall receive care and treatment to ensure the prevention of decubiti, contractions, and deformities.

(g) Each resident shall be provided with good nutrition and adequate fluids for hydration.

(i) All residents shall have ready access to water and drinking glasses.

(ii) Residents unable to feed themselves shall be assisted to eat in a prompt, orderly manner.

(iii) Residents shall be provided with adapted equipment to assist in eating and drinking.

(h) Visual privacy shall be provided for each resident during treatments and personal care.

(i) Call lights or signals (where required) shall be answered promptly.

(4) The owner shall notify the resident's responsible person and physician of significant changes or deterioration of the resident's health, and ensure the resident's transfer to an appropriate health care facility if the resident requires services beyond the scope of the Type N facility license. This notification shall be documented in the resident's record.

(5) Each resident shall receive assistance to make arrangements for medical and dental care including transportation to and from the medical or dental facility.

(6) The licensee must document and make available for Department review every accident or incident causing injury to a resident or employee. The documentation must include appropriate corrective action.

R432-300-15. Medications.

(1) A licensed health care professional must assess each resident to determine what level and type of assistance is required for medication administration. The level and type of assistance provided shall be documented on the resident's service plan.

(2) The resident's medication program shall include one or all of the following:

(a) The resident is able to self-administer medications.

(i) Residents who have been assessed to be able to self-administer medications may keep prescription medications in their rooms.

(ii) If more than one resident resides in a unit, the facility must assess each person's ability to safely have medications in the unit. If safety is a factor, the resident shall keep his medication in a locked container in the unit.

(b) Facility staff may assist residents who self-medicate by:

(i) reminding the resident to take the medication;

(ii) opening medication containers;

(iii) reading the instructions on container labels;

(iv) checking the dosage against the label of the container;

(v) reassuring the resident that the dosage is correct;

(vi) observing a resident take the medication; and

(vii) reminding the resident or the resident's responsible person when the prescription needs to be refilled.

(c) Family members or a designated responsible person may set up medications in a package which identifies the medication and time to administer. If a family member or significant other assists with medication administration, they must sign a waiver indicating that they agree to assume the responsibility to fill prescriptions, administer medication, and document that the medication has been administered. Facility staff may assist the resident to self-medicate by:

(i) reminding residents to take medications; and

(ii) opening the container at the resident's request.

(d) Unlicensed assistive personnel may assist with medication administration under the supervision of the facility's registered nurse.

(i) The facility's registered nurse may delegate the task of assisting with medication administration to unlicensed assistive personnel in accordance with the Nurse Practice Act R156-31-603.

(ii) The registered nurse who delegates the assisting with medication administration must verify and evaluate the practitioner's orders, perform a nursing assessment, and determine whether unlicensed assistive personnel can safely perform the assisting with administration of medications.

(iii) The medications must be administered according to a plan of care developed by the registered nurse.

(iv) The registered nurse shall provide and document supervision, evaluation, and training of unlicensed assistive personnel assisting with medication administration.

(v) The delegating nurse or another registered nurse shall be readily available either in person or by telecommunication.

(e) The resident may have the facility's licensed nurse administer medications.

(i) The care plan shall document instructions for medication administration.

(ii) All medications shall be prescribed in writing for the resident by the resident's licensed practitioner.

(3) The licensee or facility licensed nurse must review all resident medications at least every six months.

(a) Medication records shall include the following:

(i) the resident's name;

(ii) the name of the prescribing practitioner;

(iii) the name of the medication, including prescribed dosage;

(iv) the times and dates administered;

(v) the method of administration;

(vi) signatures of personnel administering the medication; and

(vii) the review date.

(b) Any change in the dosage or schedule of medication administration shall be made by the resident's licensed practitioner and be documented in the medication record. All personnel shall be notified of the medication change.

(c) The licensee must keep on file a list of possible reactions and precautions to any medications that facility staff assist the resident to administer.

(6) The licensed practitioner shall be notified when medications errors occur.

(7) Medications shall be stored in a locked central storage area to prevent unauthorized access.

(a) If medication is stored in a central location, the resident shall have timely access to the medication.

(b) Medications that require refrigeration shall be stored separately from food items and at temperatures between 36 - 46 degrees F.

(c) The administration, storage, and handling of oxygen

must comply with the requirements of NFPA 99.

(8) Facility policies must address the disposal of unused, outdated, or recalled medications.

(a) The licensee must return a resident's medication to the resident or to the resident's responsible person upon discharge.

(b) The licensee must document the return to the resident or the resident's responsible person of medication stored in a central storage.

R432-300-16. First Aid.

(1) There shall be at least one staff person on duty at all times who has training in basic first aid, the Heimlich maneuver, certification in cardiopulmonary resuscitation, and emergency procedures to ensure that each resident receives prompt first aid as needed.

(2) First aid training refers to any basic first aid course approved by the American Red Cross or Utah Emergency Medical Training Council.

(3) The licensee must ensure that a first aid kit is available at a specified location in the facility.

(4) The licensee must ensure that a current edition of a basic first aid manual approved by the American Red Cross, the American Medical Association, or a state or federal health agency is available at a specified location in the facility.

(5) Each facility must have an OSHA approved clean up kit for blood borne pathogens.

R432-300-17. Activity Program.

(1) The facility shall provide activities for the residents to encourage independent functioning.

(2) The licensee must complete a resident interest survey and, with the resident's involvement, develop a monthly activity calendar.

(3) The activity program shall include the residents needs and interests to include:

(a) socialization activities;

(b) independent activities of daily living; and

(c) physical activities;

(4) The resident may participate in community activities away from the facility. These activities may include:

(a) attendance at a place of worship;

(b) service activities for the community;

(c) concerts, tours, and plays; and

(d) senior citizen groups, sport leagues, and service clubs.

R432-300-18. Food Service.

(1) The facility must have adequate space and equipment for the following:

(a) resident dining;

(b) at least three days supply of food items to complete the established menus; and

(c) space for meal planning and preparation.

(2) Menus shall be planned and followed to meet the residents' nutritional needs using the four basic food groups on a daily basis.

(a) A different menu shall be followed for each day of the week.

(b) At least three meals or their equivalent shall be served daily.

(c) There shall be no more than a 14-hour span between the evening meal and breakfast unless a substantial snack is provided.

(d) Bedtime snacks of nourishing quality and quantity shall be offered routinely to all residents whose diets permit.

(3) Food shall be palatable and attractively served.

(4) If the licensee accepts residents who require special diets, the diets shall be provided to residents as ordered by the resident's physician. If the licensee is unable to provide the required diet, the resident, physician, and responsible person shall be notified so arrangements can be made to meet the resident's needs including discharge or transfer to another facility.

(5) Facility food service shall be maintained in accordance with the Utah Department of Health Food Service Sanitation rules, R392-100.

R432-300-19. Housekeeping and Maintenance Services.

(1) Housekeeping and maintenance services must be adequate to maintain a safe, clean, sanitary, and healthful environment.

(2) Entrances, exits, steps, and outside walkways shall be maintained and kept free of ice, snow, and other hazards.

(3) Furniture, bedding, linens, and equipment shall be cleaned periodically and before use by another resident.

(4) Odors shall be controlled by maintaining cleanliness and proper ventilation. Deodorizers shall not be used to cover odors caused by poor housekeeping or unsanitary conditions.

(5) A facility may keep household pets providing the pets are kept clean, disease free, and not allowed in food preparation and serving areas.

R432-300-20. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 or be assessed a penalty not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.

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R432. Health, Health Systems Improvement, Health Facility Licensure.
R432-650. End Stage Renal Disease Facility Rules.
R432-650-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-650-2. Purpose.

The purpose of this rule is to promote the public health and welfare through the establishment and enforcement of licensure standards. This rule sets standards for the operation and maintenance for End Stage Renal Disease (ESRD) facilities in order to provide safe and effective services.

R432-650-3. Definitions.

(1) The definitions in R432-1-3 apply to this rule.

(2) "Interdisciplinary professional team" means a team of qualified professionals who are responsible for creating the Patient Long Term Care Program and Patient Care Plan. The qualifications are described in 42CFR 405.2137(a) and (b), 1997, which is adopted and incorporated by reference.

R432-650-4. Licensure.

License Required. See R432-2 and R432-3.

R432-650-5. Patient Care Services.

Each ESRD facility must comply with the conditions of participation set forth in the Code of Federal Regulations, Title 42, Part 405, Subpart U., 1997, which is adopted and incorporated by reference.

R432-650-6. Personnel Health.

(1) Each ESRD facility shall establish a written health surveillance and evaluation program for facility personnel commensurate with the services offered. The program must include applicable portions of:

(a) The Communicable Disease Rule, R386-702;

(b) Tuberculosis Control Rule, R388-804; and

(c) OSHA guidelines for Bloodborne Pathogens, 29 CFR 1910.1030.

(2) All employees shall undergo a health status examination as prescribed in the health surveillance and evaluation program upon hiring and may not be assigned to patient care duties until they are determined to be able to safely discharge their duties.

(3) Each ESRD facility must test all employees who provide direct patient care for Hepatitis B, and for Tuberculosis by the Mantoux method within the first two weeks of beginning employment.

R432-650-7. Required Staffing.

(1) Each patient shall be under the continuing supervision of a physician. A physician shall be available in medical emergency situations through a current telephone call roster readily accessible to the nursing staff.

(2) Physician assistants and advanced practice registered nurses may provide services in ESRD facilities in association with the supervising or consulting nephrologist, and in accordance with state law.

(3) Each ESRD facility shall provide sufficient qualified clinical staff to meet patient care needs. A minimum of two clinical staff personnel, one a registered nurse for supervision of patient clinical care, shall be on duty whenever patients are receiving dialysis services.

(a) A registered nurse may not supervise the clinical care of more than 10 patients if arranged in an open setting, or 12 patients if arranged in three pods of four patients.

(b) A registered nurse may not supervise patient clinical care, or provide unsupervised patient clinical care until the nurse has completed training and demonstrated competency as determined by facility policy.

(c) Dialysis technicians and licensed practical nurses may not be assigned patient clinical care for more than four patients at a time.

(d) Dialysis technicians and licensed practical nurses must complete training and demonstrate competency according to facility policy prior to providing patient care.

(4) Each ESRD facility must orient all employees to specific job requirements and facility policies. The facility shall document initial and on-going employee orientation and training. Patient clinical care staff orientation and training shall include at least the following topics:

(a) patient rights and responsibilities;
(b) kidney disease processes;
(c) hemodialysis process;
(d) hemodialysis complications;
(e) dialysis access and management;
(f) psycho-social implications of dialysis on patient care;
(g) nutritional requirements;
(h) universal precautions;
(i) use of the medical emergency kit;
(j) use and function of facility equipment;
(k) emergency procedures;
(l) AAMI water treatment standards; and
(m) dialyzer re-use procedures, if offered.

(5) A registered nurse may delegate the following patient care activities to licensed practical nurses or dialysis technicians:

(a) cannulation of peripheral vascular access;

(b) administration of intradermal lidocaine, intravenous heparin and intravenous normal saline; and

(c) initiation, monitoring and discontinuation of the dialysis process.

(6) Each ESRD facility must ensure that all personnel are licensed, certified or registered as required by the Utah Department of Commerce.

R432-650-8. Patient Care Plan.

(1) Each patient must have a care plan that is developed and implemented by the interdisciplinary team with the patient's consent within one month of beginning treatment.

(2) Each patient who receives treatment for more than 90 days must have a long-term care program that is developed and implemented by the interdisciplinary team with the patient's participation.

R432-650-9. Emergency Equipment.

(1) Each ESRD facility must have available on-site a medical emergency kit containing medications, equipment and

supplies. The medical director shall determine and approve the contents of the kit.

(2) Each ESRD facility must have available on-site an emergency supply of oxygen.

R432-650-10. Drug Storage.

(1) Each ESRD facility shall provide for controlled storage and supervised preparation and use of medications. Medications and food items may be stored in the same refrigerator if safely separated.

(a) Medications stored at room temperature shall be maintained within 59-80 degrees F (15-30 degrees C).

(b) Refrigerated medications shall be maintained within 36-46 degrees F (2-8 degrees C).

(c) Medications must be kept in the original container and may not be transferred to other containers.

(2) If a medication station is provided, the facility shall provide a work counter and hand washing facilities.

R432-650-11. Medical Records.

(1) Each ESRD facility must store and file medical records to allow for easy staff access.

(a) Medical records shall be safeguarded from loss, defacement, tampering, fires, and floods.

(b) Medical records shall be protected against access by unauthorized individuals.

(2) The licensee must retain medical records for at least seven years after the last date of patient care. Records of minors shall be retained until the minor reaches the age of majority plus an additional two years. In no case shall the record be retained less than seven years.

(3) All patient records shall be retained within the facility upon change of ownership.

R432-650-12. Water Quality.

(1) Water used for dialysis purposes shall comply with quality standards established by the Association for the Advancement of Medical Instrumentation (AAMI) as published in "Hemodialysis Systems," second edition, which is adopted and incorporated by reference.

(2) Each ESRD facility that utilizes in-center water systems must have bacteriologic quality analysis performed and documented at least monthly by a laboratory that adheres to AAMI standards.

(3) For home systems, the ESRD facility must conduct bacteriological quality analysis at least monthly using an approved home testing methodology as identified in the patient care plan.

(a) An alternate schedule of testing may be approved by the attending physician.

(b) The alternate schedule shall be specified in the patient care plan.

(4) If reverse osmosis or deionization devices are used for in-center or home systems, the ESRD facility must have chemical quality analysis performed and documented at least once every 12 months by a laboratory that adheres to AAMI standards.

(5) The ESRD facility must maintain and make available for Department review all water quality test results. In the case of home dialysis, test results shall become part of the patient record maintained by the ESRD facility.

R432-650-13. Continuous Quality Improvement Program.

(1) Each ESRD facility must implement a well-defined continuous quality improvement program to monitor and evaluate the quality of patient care services. The program shall be consistent with the scope of services offered and adhere to accepted standards of care associated with the renal dialysis community.

(2) The program shall include a review of patient care records, facility policies and practices to:

(a) identify and assess problems and concerns, or opportunities for improvement of patient care;

(b) implement actions to reduce or eliminate identified problems and concerns, and improve patient care; and

(c) document corrective actions and results.

(3) The administrator shall establish a committee to implement the continuous quality improvement program. The committee shall include the facility administrator or designee, the medical director, the nursing supervisor, and other individuals as identified in the program.

(4) The committee must meet at least quarterly and keep minutes and related records, which shall be available for Department review.

(5) The continuous quality improvement program may include more than one facility in scope only when the facilities are organized under the same governing body and the program addresses problems, concerns and issues at the individual ESRD facility level.

R432-650-14. Physical Environment.

The following standards apply for new construction and remodeling of ESRD facilities:

(1) The treatment area may be an open area and shall be separate from the administrative and waiting area. Individual treatment areas must contain at least 80 square feet. Each treatment area shall have the capacity for privacy for each patient.

(2) The dialysis treatment area must include a nurses station designed to provide visual observation of the patient treatment area.

(3) There shall be at least one hand washing facility serving no more than eight stations. All hand washing stations shall be convenient to the nurses station and treatment areas.

(4) If an infection isolation room is required to control airborne infection, the isolation room shall have a separate hand washing facility and comply with R386-702, Communicable Disease Rule, and other applicable standards determined in the pre-construction plan review process.

(5) If the ESRD facility provides home dialysis training, a private treatment room of at least 120 square feet is required for patients who are being trained to use dialysis equipment at home. The room shall contain a counter, hand washing facilities, and a separate drain for fluid disposal.

(6) Each ESRD facility must provide a clean work area that is separate from soiled work areas. If the area is used for preparing patient care items, it must contain a work counter, hand washing facilities, and storage facilities for clean and

sterile supplies. If the area is used only for storage and holding as part of a system for distribution of clean and sterile materials, the work counter and hand washing facilities may be omitted.

(7) Each ESRD facility must provide a soiled work area that contains a hand washing sink, work counter, storage cabinets, waste receptacles and a soiled linen receptacle.

(8) If dialyzers are reused, a reprocessing room is required that is sized and equipped to perform the functions required and to include one-way flow of materials from soiled to clean with provisions for refrigerated temporary storage of dialyzers, a decontamination and cleaning area, sinks processors, computer processors and label printers, a packaging area, and dialyzer storage cabinets.

(9) If a nourishment station for dialysis service is provided, the nourishment station must contain a sink, a work counter, a refrigerator, storage cabinets, and equipment for serving nourishments as required.

(10) Each ESRD facility must have an environmental services closet immediately available to the treatment area. The closet must contain a floor receptor or service sink and storage space for housekeeping supplies and equipment.

(11) If an equipment maintenance service area is provided, the service area must contain hand washing facilities, a work counter and a storage cabinet.

(12) Each ESRD facility must provide a supply area or supply carts.

(13) Storage space out of the direct line of traffic shall be available for wheelchairs and stretchers, if stretchers are provided.

(14) Each ESRD facility must provide a clean linen storage area commensurate with the needs of the facility. The storage area may be within the clean work area, a separate closet, or distribution system. If a closed cart distribution system is used for clean linen, the cart must be stored out of the path of normal traffic.

(15) Each ESRD facility using central batch delivery system, must provide, either on premises or through written arrangements, individual delivery systems for the treatment of any patient requiring special dialysis solutions.

(16) Each ESRD facility must house water treatment equipment in an enclosed room at a sufficient distance from the patient treatment area to prevent machinery and operational noise from disturbing patients.

(17) Each ESRD facility must provide a patient toilet with hand washing facilities immediately adjacent to the treatment area.

(18) Each ESRD facility must provide lockers, toilets and hand washing facilities for staff.

(19) Each ESRD facility must provide a secure storage area for patients' belongings.

(20) A waiting area with seating accommodations shall be available or accessible to the dialysis unit. A toilet room with hand washing facilities, a drinking fountain, and a telephone for public use shall be available or accessible for use by persons using the waiting room.

(21) Office and clinical work space shall be available for administrative services.

R432-650-15. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 or be assessed a penalty not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.

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R434. Health, Health Systems Improvement, Primary Care and Rural Health.

R434-20. Special Population Health Care Provider Financial Assistance Program.

R434-20-1. Purpose.

This rule provides criteria for the implementation of the Special Population Health Care Provider Financial Assistance and Retention Act; the award of grant funds to primary health care providers to repay loans taken for educational expenses; and the award of scholarship funds to individuals seeking to become primary health care providers, in exchange for practicing for a specified period of time in a medically underserved urban area of the state.

R434-20-2. Definitions.

The definitions as they appear in Section 26-9e-2 apply. In addition:

(1) "Applicant" means a person who submits a completed application for a grant or scholarship under this part.

(2) "Approved site" means an eligible site which is approved by the committee pursuant to Subsection 26-9e-2(15).

(3) "Department" means the Utah Department of Health.

(4) "Eligible site" means a site that the committee has designated as meeting the eligibility criteria established by the committee and is in a medically underserved urban area pursuant to Subsections 26-9e-5 (1)(f) and 26-9e-2(15).

(5) "Grant" means loan repayment as defined in Subsection 26-9e-2(6).

(6) "Postgraduate training" means internship, practicum, preceptorship, or residency training required for primary health care provider licensure and as required by this rule.

(7) "Scholarship"means an award of money for educational expenses given to an individual under a contract where the individual agrees to become a primary health care provider in exchange for practicing for a specified period of time in a medically underserved urban area in the state.

R434-20-3. Grant Administration.

(1) The department may provide a grant to repay loans taken for primary health care provider educational expenses.

(2) The grant recipient may not enter into any other similar contracts until he satisfies the service obligation described in the grant.

(3) For a grant recipient with a four year contract, the state shall provide 20% of the grant at the completion of the first three months, 20% of the grant at the completion of year one, 20% at the completion of year two, 20% at the completion of year three, and 20% at the completion of year four.

(4) For a grant recipient with a three year contract, the state shall provide 25% of the grant at the completion of the first three months, 25% of the grant at the completion of year one, 25% at the completion of year two, and 25% at the completion of year three.

(5) For a grant recipient with a two year contract, the state shall provide 33% of the grant at the completion of the first three months, 33% of the grant at the completion of year one, and 34% at the completion of year two.

(6) A grant recipient must have a permanent, unrestricted license to practice in their primary health care specialty in Utah before his first day of practice under the grant contract.

(7) A grant recipient must obtain approval from the committee, of the eligible site to complete his service obligation, prior to beginning to fulfill his service obligation at an eligible site.

(8) A grant recipient must obtain approval prior to changing the approved site where he fulfills his service obligation.

R434-20-4. Full-Time Equivalency Provisions for Grant Recipients.

(1) The annual grant amount is based on the level of full-time equivalency that the grant recipient agrees to work.

(2) A grant recipient who provides services for at least 40 hours per week may be awarded a grant based on the percentages outlined in Section R434-20-3.

(3) A grant recipient who provides services for less than 40 hours per week may be awarded a proportionately lower grant based on a full-time equivalency of 40 hours per week.

R434-20-5. Grant Eligibility and Selection.

(1) In selecting a grant recipient for a grant award, the committee shall evaluate the applicant based on the following selection criteria:

(a) the extent to which an applicant's training in a primary health care specialty needed at an eligible site;

(b) the applicant's commitment to serve in a medically underserved urban area which can be demonstrated in any of the following ways:

(i) has worked or volunteered at a community or migrant health center, homeless shelter, public health department clinic, or other service commitment to the underserved;

(ii) has work or educational experience with special populations through the Peace Corps, VISTA, or a similar volunteer agency;

(iii) has cultural or language skills that may be essential for provision of primary health care services to special populations;

(iv) other facts or experience that the applicant can demonstrate to the committee that establishes his commitment to serve special populations;

(c) the availability of the applicant to begin service, with greater consideration being given to applicants available for service at earlier dates;

(d) the length of the applicant's proposed service obligation, with greater consideration given to applicants who agree to serve for longer periods of time;

(e) the applicant's:

(i) academic standing;

(ii) prior professional or personal experience serving special populations,

(iii) board certification or eligibility;

(iv) postgraduate training achievements;

(v) peer recommendations;

(vi) other facts that the applicant can demonstrate to the committee that establishes his professional competence or conduct;

(f) the applicant's financial need;

(g) the applicant's willingness to accept Medicaid,

Medicare, or Utah Medical Assistance patients;

(h) the applicant's willingness to provide care regardless of a patient's ability to pay;

(i) the applicant's ability and willingness to provide care;

(j) the applicant's achieving an early match with an eligible site.

(2) To be eligible for a grant, an applicant must be a United States citizen or permanent resident.

(3) To be eligible for a grant, an applicant must be enrolled in or have completed postgraduate training prior to submitting an application to participate in the grant program.

(4) Only grant applicants who are available to begin practicing as a primary health care provider in the state within one year from the date of application are eligible for this program.

R434-20-6. Dentist Grant Eligibility and Selection.

(1) In selecting a Dentist grant recipient for a grant award, the committee shall evaluate the applicant based on the selection criteria listed in Section R434-20-5.

(2) In selecting a Dentist grant recipient for a grant award, the committee shall also evaluate the Dentist applicant based on the following selection criteria:

(a) must have attended a dental school in the United States or Canada accredited by the American Dental Association.

(b) must have passed the Western Regional Examining Board, pursuant to Subsection R156-69-302b(2)(a).

(c) must have passed the Central Regional Dental Testing Service, Inc., or Northeast Regional Board of Dental Examiners, Inc., or Southern Regional Testing Agency, Inc., examinations, pursuant to Subsection R156-69-302b(2)(b).

(d) must have passed the Utah Dentist and Dental Hygienist Law Examination, pursuant to Subsection R156-69-302b(1).

R434-20-7. Mental Health Therapist Grant Eligibility and Selection.

(1) In selecting a Mental Health Therapist grant recipient for a grant award, the committee shall evaluate the applicant based on the selection criteria listed in Section R434-20-5.

(2) In selecting a clinical psychologist grant recipient for a grant award, the committee shall also evaluate the clinical psychologist applicant based on the following selection criteria:

(a) must have attended a school in the United States or Canada accredited by a regional institutional accrediting body identified in the "Accredited Institutions of Postsecondary Education" and recognized by the Association of State and Provincial Psychology Boards as listed in the "Doctoral Psychology Programs Meeting Designation Criteria", pursuant to Subsection R156-61-302a(1), awarding a degree that meets the requirements of Subsection 58-61-304(1)(d).

(b) must be completing or have completed a minimum two year supervised clinical internship prior to submitting an application to participate in the grant program.

(c) must have passed the Examination for the Professional Practice of Psychology developed by the American Association of State Psychology Board, pursuant to Subsection R156-61-302c(1)(a).

(d) must have passed the Utah Psychology Law Examination, pursuant to Subsection R156-61-302c(1)(b).

(3) In selecting a clinical social worker grant recipient for a grant award, the committee shall also evaluate the clinical social worker applicant based on the following selection criteria:

(a) must have attended a school in the United States or Canada accredited by the United States Council on Social Work Education or the Canadian Association of Schools of Social Work, awarding a degree in social work.

(b) must be completing or have completed a minimum 4,000 hours of supervised clinical social work and mental health therapy training which includes 1,000 hours of face to face therapy completed over a duration of not less than two years, prior to submitting an application to participate in the grant program.

(c) must have passed the Utah Social Work Law, Rules, and Ethics Examination, pursuant to Subsection R156-60a-302d(1)(a).

(d) must have passed the National Basic Examination of the American Association of State Social Work Boards, pursuant to Subsection R156-60a-302d(2)(b).

(e) must have passed the National Clinical Examination of the American Association of State Social Work Boards or the Clinical Social Workers Examination of the State of California, pursuant to Subsection R156-60a-302d(1)(b).

(4) In selecting a marriage and family therapist grant recipient for a grant award, the committee shall also evaluate the marriage and family therapist applicant based on the following selection criteria:

(a) must have attended a school in the United States or Canada accredited by or in a candidacy status by the Commission on Accreditation for Marriage and Family Therapy Education, awarding a degree in marriage and family therapy.

(b) must be completing or have completed 4,000 hours of marriage and family therapy training and 1,000 hours supervised mental health therapy training completed over a duration of not less than one year, prior to submitting an application to participate in the grant program.

(c) must have passed the Utah Marriage and Family Therapy Law and Ethics Examination and the Examination of Marital and Family Therapy written for the Association of Marital and Family Therapy Regulatory Boards, pursuant to Subsection R156-60b-302d(1).

(5) In selecting a professional counselor grant recipient for a grant award, the committee shall also evaluate the professional counselor applicant based on the following selection criteria:

(a) must have attended a school in the United States or Canada accredited by a regional institutional accrediting body identified in the "Accredited Institutions of Postsecondary Education", for the Commission of Recognition of Postsecondary Accreditation of the American Council on Education, awarding a degree that meets the requirements of Subsection 58-60-405(4).

(b) must be completing or have completed 4,000 hours of supervised professional counselor training and 1,000 hours of supervised training in mental health therapy completed over a duration of not less than one year, prior to submitting an application to participate in the grant program.

(c) must have passed the Utah Professional Counselor Law, Rules, and Ethics Examination, pursuant to Subsection

R156-60c-302d(1)(a).

(d) must have passed the National Counseling Examination of the National Board of Certified Counselors, pursuant to Subsection R156-60c-302d(1)(b).

(e) must have passed the National Clinical Mental Health Counseling Examination of the National Board of Certified Counselors, pursuant to Subsection R156-60c-302d(1)(c).

R434-20-8. Physician Grant Eligibility and Selection.

(1) In selecting a Physician grant recipient for a grant award, the committee shall evaluate the applicant based on the selection criteria listed in Section R434-20-5.

(2) In selecting a Physician grant recipient for a grant award, the committee shall also evaluate the Physician applicant based on the following selection criteria:

(a) must have attended an accredited school of allopathic or osteopathic medicine, accredited by the Liaison Committee on American Medical Education or by the American Osteopathic Association Bureau of Professional Education, which awards a degree of Doctor of Medicine or Doctor of Osteopathy.

(b) must be enrolled in or have completed a minimum three year postgraduate training program in the United States or Canada accredited by the Accreditation Committee on Graduate Medical Education or the American Osteopathic Association Bureau of Professional Education or accredited by the Royal College of Physicians and Surgeons of Canada, prior to submitting an application to participate in the grant program.

(c) must have passed the examination requirements for licensure as a physician or surgeon or osteopathic physician or surgeon in Utah, pursuant to Section R156-67-302d or Section R156-68-302b.

R434-20-9. Physician Assistant Grant Eligibility and Selection.

(1) In selecting a Physician Assistant grant recipient for a grant award, the committee shall evaluate the applicant based on the selection criteria listed in Section R434-20-5.

(2) In selecting a Physician Assistant grant recipient for a grant award, the committee shall also evaluate the Physician Assistant applicant based on the following selection criteria:

(a) must be enrolled in or completing a physician assistant program accredited by the Commission on Accreditation of Allied Health Education Programs.

(b) must have passed the National Commission on the Certification of Physician Assistants/National Board of Medical Examiners Physician Assistant National Certification Exam, pursuant to Section R156-70a-302(1).

(c) must have passed the Utah Physicians Assistant Law and Rules Examination, pursuant to Section R156-70a-302(2).

(d) must have a permanent, unrestricted license to practice medicine as a physician assistant in Utah.

(e) must submit a copy of the delegation of services agreement signed by the supervising physician and substitute supervising physician for approval by the committee.

(3) The department may not provide a grant to a physician assistant until the physician assistant passes the National Commission on the Certification of Physician Assistants/National Board of Medical Examiners Physician Assistant National Certification Exam.

R434-20-10. Eligible Bona Fide Loans.

(1) A bona fide loan may include the following:

(a) a commercial loan made by a bank, credit union, savings and loan association, insurance company, school, or credit institution;

(b) a governmental loan made by a federal, state, county, or city agency;

(c) a loan made by another person which is documented by a contract notarized at the time of the making of the loan; indicative of an arm's length transaction, and with competitive term and rate as other loans available to primary health care provider students.

(d) a loan that the applicant conclusively demonstrates is a bona fide loan.

R434-20-11. Extension of Grant Contract.

(1) A grant recipient who has signed a grant contract for less than four years may apply on or after his first day of practice under a grant to extend his grant contract by one or two years, up to a maximum of four years total.

(2) The grant contract may be extended only at an approved site.

(3) A grant recipient who desires to extend his grant contract must inform the committee in writing of his interest in extending his grant contract at least six months prior to the termination of his unextended grant contract.

R434-20-12. Schedule of Breach of Grant Contract Repayment.

(1) A grant recipient who fails to complete the service obligation shall begin to repay the penalty to the department within 30 days of the breach. The department may submit for immediate collection all amounts due from a breaching grant recipient who does not begin to repay within 30 days.

(2) The amount to be paid back shall be determined from the end of the month in which the grant recipient breached the contract as if the grant recipient had breached at the end of the month.

(3) The breaching grant recipient shall pay the total amount due within one year of breaching the contract. The scheduled payback may not be less than four equal quarterly payments.

R434-20-13. Scholarship Administration.

(1) The department may provide scholarship funds to a scholarship recipient for a maximum of four years of postgraduate schooling or until completion of postgraduate schooling, whichever is shorter.

(2) For each academic year the committee may award $12,000 to a scholarship recipient.

(3) The committee may pay tuition and fees directly to the school and determine the amount and frequency of direct payments to the student.

(4) The scholarship recipient may not enter into a scholarship contract other than with the program established in Section 26-9e-1 until the service obligation agreed upon in the state scholarship contract is satisfied.

(5) A scholarship recipient must work full-time, as defined by the scholarship recipient's employer and as specified in his contract with the department.

(6) A scholarship recipient must serve one year of service obligation for each year he received a scholarship under this program.

(7) The committee may cancel a scholarship at any time if it finds that the scholarship recipient has voluntarily or involuntarily terminated his schooling, postgraduate training, or if it appears to be a reasonable certainty that the scholarship recipient does not intend to practice as required by statute, rules, and contract in a medically underserved urban area in the state.

(8) Upon completion of schooling and required postgraduate training, the scholarship recipient is responsible to find employment at an eligible site in a medically underserved urban area of Utah.

(9) A scholarship recipient must obtain approval from the committee prior to beginning service obligation at an eligible site.

(10) A scholarship recipient must obtain approval from the committee prior to changing the approved site where he fulfills his service obligation.

(11) A dental, medical, mental health therapist, and osteopathic scholarship recipient must:

(a) begin required postgraduate training within six months after he obtains his degree. Postgraduate training must be continuous unless the scholarship recipient obtains prior approval from the director of the scholarship recipient's training program and from the committee.

(b) obtain an unrestricted license to practice in the state and begin practicing for the agreed upon period of time at an approved site within six months of completion of postgraduate training.

(12) Medical and Osteopathic scholarship recipients shall:

(a) select for postgraduate training a residency in one of the following areas: family practice, general internal medicine, general pediatrics, or obstetrics/gynecology. If the scholarship recipient desires to choose a postgraduate training program in a medical specialty other than family practice, general internal medicine, general pediatrics, or obstetrics/gynecology, he must demonstrate the need for the medical specialty in a medically underserved urban area and obtain approval from the committee.

(b) attend a minimum three-year postgraduate training program.

(13) Physician assistant scholarship recipients:

(a) must obtain a temporary physician assistant license and begin practicing medicine at an eligible site for the agreed upon period of time within six months of completion of physician assistant education.

(b) must submit a copy of the delegation of services agreement signed by the supervising physician and substitute supervising physician for approval by the committee.

(c) shall take the National Commission on the Certification of Physician Assistants/National Board of Medical Examiners Physician Assistant National Certification Exam the first time it is offered after completion of physician assistant schooling. After the physician assistant scholarship recipient passes this exam he shall obtain a permanent, unrestricted license as a physician assistant as soon as possible.

(d) if the physician assistant scholarship recipient fails the National Commission on the Certification of Physician Assistants/National Board of Medical Examiners Physician Assistant National Certification Exam, he must retake the exam within one year of failure of the National Certification Exam. If the physician assistant scholarship recipient fails the exam a second time, or fails to retake the exam, he shall be in default of the scholarship contract. The period when the temporary license is lost due to failing the exam and the physician assistant scholarship recipient is unable to practice at an approved site, does not count against retiring the service obligation under the contract.

R434-20-14. Scholarship Applicant Eligibility and Selection.

(1) In selecting a recipient for a scholarship, the committee shall evaluate the applicant based on the following selection criteria:

(a) the applicant's commitment to serve in a medically underserved urban area, which may be demonstrated in any of the following ways:

(i) has worked or volunteered to serve special populations or other service commitment to the underserved;

(ii) has work or educational experience with special populations through the Peace Corps, VISTA, or a similar volunteer agency;

(iii) has cultural or language skills that may be essential for provision of primary health care services to special populations;

(iv) has declared a commitment to practice in a medically underserved urban area as expressed in the essay which is required as part of the scholarship application;

(v) other facts or experience that the applicant can demonstrate to the committee that establishes his commitment to special populations.

(b) the applicant's need for assistance in financing his education;

(c) the applicant's academic ability as demonstrated by official transcripts and official school admission test scores;

(d) the applicant's evidence that he has been accepted by or currently attends an accredited school approved by the committee;

(e) the applicant's personal and professional references demonstrating the applicant's good character and potential to successfully complete school.

(2) In selecting a scholarship recipient, the committee may give preference to:

(a) applicants who agree to serve in a medically underserved urban area of the state for a greater length of time in return for scholarship assistance;

(b) physician applicants who agree to complete their postgraduate training in one of the following specialties: family practice, general internal medicine, general pediatrics, obstetrics/gynecology, or psychiatry.

(3) To be eligible to receive a scholarship, an applicant must be a United States citizen or permanent resident.

(4) Before the committee awards a scholarship, applicants must participate in an interview with the committee or its designee.

(5) To remain eligible to receive scholarship funds, an

scholarship recipient must satisfactorily complete each year of school and be a full-time matriculated student.

R434-20-15. Scholarship Recipient Obligations.

(1) A scholarship recipient must maintain minimum continuous registration to maintain full-time student status until he completes all requirements for his degree. The maximum years leading to a degree may not exceed six years, unless extended pursuant to R434-20-11.

(2) Within six months before and not exceeding one month following completion of postgraduate training, a scholarship recipient shall provide to the department documented evidence from an eligible site of its intent to hire him.

(3) Upon completion of schooling or postgraduate training, the scholarship recipient is responsible for finding employment at an eligible site in a medically underserved urban area of Utah.

(4) A scholarship recipient must obtain an unrestricted license to practice in Utah prior to beginning practice at the approved site.

(5) A scholarship recipient must obtain approval from the committee prior to beginning to fulfill his service obligation at an eligible site.

(6) A scholarship recipient must begin employment at the approved site within six months of completion of postgraduate training.

(7) A scholarship recipient, upon completion of postgraduate training, must demonstrate willingness to serve special populations by:

(a) accepting Medicare, Medicaid, or Utah Medical Assistance Program patients;

(b) providing care regardless of patient's ability to pay;

(c) showing ability and willingness to provide care.

(8) The minimum length of service obligation is two years, or such longer period to which the applicant and the committee agree.

(9) The scholarship recipient must obtain committee approval prior to changing the approved site where he fulfills his service obligation.

R434-20-16. Dentist Scholarship Recipient Obligations.

(1) A Dentist scholarship recipient must abide by the scholarship recipient obligations listed in Section R434-20-15 and complete the following service obligations:

(a) must attend a dental school in the United States or Canada accredited by the American Dental Association.

(b) must enroll in a one year residency.

(c) must pass the Western Regional Examining Board, pursuant to Subsection R156-69-302b(2)(a).

(d) must pass the Central Regional Dental Testing Service, Inc., or Northeast Regional Board of Dental Examiners, Inc., or Southern Regional Testing Agency, Inc., examinations, pursuant to Subsection R156-69-302b(2)(b).

(e) must pass the Utah Dentist and Dental Hygienist Law Examination, pursuant to Subsection R156-69-302b(1).

R434-20-17. Mental Health Therapist Scholarship Recipient Obligations.

(1) A clinical psychologist scholarship recipient must abide by the scholarship recipient obligations listed in Section R434-20-15 and complete the following service obligations:

(a) must attend a school in the United States or Canada accredited by a regional institutional accrediting body identified in the "Accredited Institutions of Postsecondary Education" and recognized by the Association of State and Provincial Psychology Boards as listed in the "Doctoral Psychology Programs Meeting Designation Criteria", pursuant to Subsection R156-61-302a(1), awarding a degree that meets the requirements of Subsection 58-61-304(1)(d).

(b) must complete a minimum two year supervised clinical internship.

(c) must pass the Examination for the Professional Practice of Psychology developed by the American Association of State Psychology Board, pursuant to Subsection R156-61-302c(1)(a).

(d) must pass the Utah Psychology Law Examination, pursuant to Subsection R156-61-302c(1)(b).

(2) A clinical social worker scholarship recipient must abide by the scholarship recipient obligations listed in Section R434-20-15 and complete the following service obligations:

(a) must attend a school in the United States or Canada accredited by the United States Council on Social Work Education or the Canadian Association of Schools of Social Work, awarding a degree in social work.

(b) must complete a minimum 4,000 hours of supervised clinical social work and mental health therapy training which includes 1,000 hours of face to face therapy completed over a duration of not less than two years.

(c) must pass the Utah Social Work Law, Rules, and Ethics Examination, pursuant to Subsection R156-60a-302d(1)(a).

(d) must pass the National Basic Examination of the American Association of State Social Work Boards, pursuant to Subsection R156-60a-302d(2)(b).

(e) must pass the National Clinical Examination of the American Association of State Social Work Boards or the Clinical Social Workers Examination of the State of California, pursuant to Subsection R156-60a-302d(1)(b).

(3) A marriage and family therapist scholarship recipient must abide by the scholarship recipient obligations listed in Section R434-20-15 and complete the following service obligations:

(a) must attend a school in the United States or Canada accredited by or in a candidacy status by the Commission on Accreditation for Marriage and Family Therapy Education, awarding a degree in marriage and family therapy.

(b) must complete 4,000 hours of marriage and family therapy training and 1,000 hours supervised mental health therapy training completed over a duration of not less than one year.

(c) must pass the Utah Marriage and Family Therapy Law and Ethics Examination and the Examination of Marital and Family Therapy written for the Association of Marital and Family Therapy Regulatory Boards, pursuant to Subsection R156-60b-302d(1).

(4) A professional counselor scholarship recipient must abide by the scholarship recipient obligations listed in Section R434-20-15 and complete the following service obligations:

(a) must attend a school in the United States or Canada accredited by a regional institutional accrediting body identified in the "Accredited Institutions of Postsecondary Education", for the Commission of Recognition of Postsecondary Accreditation of the American Council on Education, awarding a degree that meets the requirements of Subsection 58-60-405(4).

(b) must complete 4,000 hours of supervised professional counselor training and 1,000 hours of supervised training in mental health therapy completed over a duration of not less than one year.

(c) must pass the Utah Professional Counselor Law, Rules, and Ethics Examination, pursuant to Subsection R156-60c-302d(1)(a).

(d) must pass the National Counseling Examination of the National Board of Certified Counselors, pursuant to Subsection R156-60c-302d(1)(b).

(e) must pass the National Clinical Mental Health Counseling Examination of the National Board of Certified Counselors, pursuant to Subsection R156-60c-302d(1)(c).

R434-20-18. Physician Scholarship Recipient Obligations.

(1) A Physician scholarship recipient must abide by the scholarship recipient obligations listed in Section R434-20-15 and complete the following service obligations:

(a) must attend a school of allopathic or osteopathic medicine in the United States or Canada, accredited by the Liaison Committee on American Medical Education or by the American Osteopathic Association Bureau of Professional Education, which awards a degree of Doctor of Medicine or Doctor of Osteopathy.

(b) must enroll in and complete a minimum three year postgraduate training program in the United States or Canada accredited by the Accreditation Committee on Graduate Medical Education or the American Osteopathic Association Bureau of Professional Education or accredited by the Royal College of Physicians and Surgeons of Canada.

(c) must pass the examination requirements for licensure as a physician or surgeon or osteopathic physician or surgeon in Utah, pursuant to Section R156-67-302d or Section R156-68-302b.

R434-20-19. Physician Assistant Scholarship Recipient Obligations.

(1) A Physician Assistant scholarship recipient must abide by the scholarship recipient obligations listed in Section R434-20-15 and complete the following service obligations:

(a) must enroll in and complete a physician assistant program accredited by the Commission on Accreditation of Allied Health Education Programs.

(b) shall take the National Commission on the Certification of Physician Assistants/National Board of Medical Examiners Physician Assistant National Certification Exam pursuant to Section R156-70a-302(1), the first time it is offered after completion of physician assistant schooling. After the scholarship recipient passes this exam he shall obtain a permanent unrestricted license to practice as soon as possible.

(c) if the scholarship recipient fails the National Commission on the Certification of Physician Assistants/National Board of Medical Examiners Physician Assistant National Certification Exam, he must retake the exam within one year of failure of the national certification exam. If the scholarship recipient fails the exam a second time, or fails to retake the exam, he shall be in default of the scholarship contract. The period when the temporary license is lost due to failing the exam and the scholarship recipient is unable to practice at an approved site does not count against retiring the obligated service under the contract.

(d) shall take the Utah Physicians Assistant Law and Rules Examination, pursuant to Section R156-70a-302(2).

(e) must obtain a temporary license to practice medicine as a physician assistant prior to beginning service obligation at the approved site.

(f) must submit a copy of the delegation of services agreement signed by the supervising physician and substitute supervising physician for approval by the committee.

R434-20-20. Extension of Contract with Scholarship Recipient.

(1) The committee may extend the period within which the scholarship recipient must complete his dental, medical, mental health therapist, osteopathic, or physician assistant education:

(a) if the scholarship recipient has a serious illness;

(b) if the scholarship recipient is activated by the military;

(c) for other good cause shown, as determined by the committee.

(2) The service obligation may be extended only at an eligible site.

R434-20-21. Schedule of Breach of Scholarship Contract Repayment.

(1) A scholarship recipient who breaches his scholarship contract shall be evaluated based on the criteria listed in Subsections 26-9e-9(4) and 26-9e-9(5), as well as the following criteria:

(a) A scholarship recipient who fails to complete the required minimum postgraduate training within the time period agreed upon with the committee shall within 90 days after the deadline for completing his postgraduate training or within 90 days of his failure to continue his postgraduate training, whichever occurs earlier, repay:

(i) all scholarship money received according to a schedule established by the committee;

(ii) if not repaid within one year of default, 12% per annum interest on unrepaid scholarship amounts.

(b) The amount to be paid back shall be determined from the end of the month in which the scholarship recipient breached the contract as if the scholarship recipient had breached at the end of the month.

(c) The breaching scholarship recipient shall pay the total amount due within four years of breaching the contract. The scheduled pay back may not be less than four equal payments.

R434-20-22. Release of Recipient from Service Obligation.

(1) The committee may release a recipient from his service obligation without penalty:

(a) if the service obligation has been fulfilled;

(b) if he dies;

(c) for other good cause shown, as determined by the

committee.

(2) Extreme hardship sufficient to release the recipient without penalty includes:

(a) inability to complete dental, medical, mental health therapist, osteopathic, or physician assistant school or fulfill service obligation due to permanent disability that prevents the recipient from completing school or performing any work for remuneration or profit;

(b) a family member, for which the recipient is the principal care giver, has a life-threatening chronic illness.

R434-20-23. Eligible Site Determination.

(1) Criteria the committee shall use to determine an eligible site include:

(a) Within a medically underserved urban area:

(i) the percentage of the population with incomes under 200% of the federal poverty level;

(ii) the percentage of the population 65 years of age and over;

(iii) the percentage of the population under 18 years of age;

(iv) the percentage of population that is homeless,

(v) the percentage of population that is migrant or seasonal farm workers,

(vi) the percentage of population that has HIV/AIDS.

(vii) the distance to the nearest primary health care provider and barriers to reaching the primary health care provider.

(c) The committee may give preference to sites which provide letters of support from:

(i) a majority of practicing primary health care providers in the service area,

(ii) county and civic leaders,

(iii) hospital administrators,

(iv) business leaders, local chamber of commerce, citizens, and

(v) local health departments.

(2) An eligible site approved to have a grant or scholarship recipient must offer a salary and benefit package competitive with salaries and benefits of other providers in the service area.

(3) A medically underserved urban area must apply to and gain approval from the committee in order to be determined eligible for a scholarship or grant recipient to complete their service obligation.

R434-20-24. Annual Assessment and Strategy.

(1) The committee shall annually complete an assessment and strategy on techniques to promote and facilitate the recruitment and retention of primary health care providers to serve special populations in medically underserved areas of the state.

(2) The committee shall develop alternative service obligation criteria that a grant or scholarship recipient may use to fulfill his service obligation if the grant or scholarship recipient is unable to fulfill his service obligation at an approved site due to reasons beyond his control.

R434-20-25. Reporting.

The committee may require the recipient to provide information regarding the academic performance, commitment to medically underserved urban areas, continuing financial need, service obligation fulfillment, and other information reasonably necessary for the administration of the program during the period the recipient is in dental, medical, mental health therapist, osteopathic, or physician assistant school; postgraduate training; and in practice.

KEY: grants, scholarships
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R501. Human Services, Administration, Administrative Services, Licensing.

R501-1. General Provisions.

R501-1-1. Definition.

The general provisions are the procedures for the administration and issuance of a license.

A. Legal Authority

1. The Utah State Department of Human Services, hereinafter referred to as DHS, does hereby adopt and promulgate the following rules governing licensure of human service programs in accordance with 62A-2-101 through 62A-2-121.

2. This act provides for issuance of a license by DHS, Office of Licensing, hereinafter referred to as Office, upon compliance with the Rules, which include General Provisions, Core, Categorical and single service Rules.

B. Purpose

1. The purpose of licensing under these rules is to authorize a public or private agency or a home to provide a defined human service program. The license designates that the program has the ability to provide the service.

2. A license indicates that the governing body of the program has demonstrated or has provided assurance that services shall be provided in accordance with these rules.

R501-1-2. License Procedure.

A. Application

A program seeking an initial or renewal license shall make application on forms provided by the Office.

B. The licensure fee, as determined by the Utah State Legislature, shall be submitted.

C. A program seeking a license to provide direct service to minors or vulnerable adults shall submit identifying information to the Office for a criminal background screening in accordance with 62A-4a-413 and 62A-2-120, and abuse and neglect background screening in accordance with 62A-3-311.1 and 62A-2-121.

D. Review

1. Each initial or renewal applicant shall permit a representative or representatives of the Office to conduct an on-site review of the physical facility, program operation, consumer records, and to interview staff and consumers to determine compliance.

2. Annually an on-site review shall be carried out by a designated representative or representatives of the Office by appointment, as pre-arranged with the program.

3. The findings shall be shared with the program at the conclusion of the review. A written report will be filed in the Office by the representative.

4. If the report indicates non-compliance with Rules, the Office and the program shall develop a written plan of action to achieve compliance with the Rules.

R501-1-3. Types of License.

A. Annual License

1. The Office shall issue an annual license after determination has been made that the applicant is in compliance with the Rules of the Office.

2. The license shall state name and address of the program facility, category of service, maximum consumer capacity when appropriate, and period during which license is in effect.

3. The license shall be posted in a conspicuous place on the premises.

4. A license is automatically void if there is any change in the ownership, management, or address of the program.

B. Renewal License

A license must be renewed annually, upon application and payment of applicable fee, providing the Office finds that the service program and facility has complied with Rules of the Office.

C. License Extension

1. A license may be extended by the Office for a designated period of time not to exceed twelve months.

2. The Office shall state in writing the terms of the extension in a letter to the program.

D. Conditional License

1. The Office may issue a conditional license for the following:

a. a new conditional program which is temporarily unable to comply with Rules of the Office, or

b. due cause.

2. The non-compliance or violation shall not present an immediate threat to the health or safety of the consumer.

3. The duration of the conditional license shall be determined by the Office.

4. The Office shall identify in writing the specific areas of non-compliance including a timetable for resolution.

E. Accreditation

1. The Office may accept accreditation by a nationally recognized organization, e.g., Joint Commission on Accreditation of Health Care Organizations, Commission on Accreditation of Rehabilitation Facilities, as compliance with these Rules for licensure.

2. The standards of the reciprocal organization shall fulfill the intent of these Rules.

3. The program shall request reciprocity in writing.

4. The reciprocity agreement will be formalized by written agreement, signed by the Program Director, Office Director and Division Director if appropriate.

5. The Office may conduct periodic on-site reviews and respond to any consumer complaint or concern of a program licensed through reciprocity.

R501-1-4. Monitoring.

A. Office staff shall investigate reports of unlicensed programs and attempt to license all who require a license by statute. If the program fails to become licensed, a notice of the violation shall be referred to the Offices of the Attorney General and the appropriate County Attorney.

B. Office staff shall investigate complaints regarding a licensed program.

C. Unannounced visits may be conducted at any time, and if an unannounced visit indicates non-compliance or a license violation, the Office and the program shall develop a written plan of action to achieve compliance or correct the violation. If the violation is a threat to the health or safety of consumers, a license sanction may be immediate.

R501-1-5. Corrective Action Plan for Non-Compliance With Rules.

A. If an evaluation indicates non-compliance with Rules of the Office, the program and Office staff shall develop a plan of action to achieve compliance while continuing to care for minors or adults.

B. The plan of action shall include the following:

1. a statement of each violation,

2. a method and date for resolution, and

3. all plans of action shall be documented in writing and signed by the appropriate program staff.

C. Technical assistance shall be offered to assist a program to comply with a plan of action.

D. If a program fails or refuses to comply with the plan of action, a Notice of Agency Action shall be sent to the program from the Office.

E. If the program fails or refuses to meet requirements or the Notice of Agency Action, the license may be suspended or revoked.

F. Directors of programs shall be required to post the Notice of Agency Action indicating the violation of Rules. This shall be posted in a conspicuous place for review by consumers or parents or guardians of consumers. The plan of action shall be reviewed by Office staff. When compliance is achieved, it shall be recorded in the program's record. A letter showing compliance shall be sent to the program to post for review by consumers or parents or guardians of consumers.

R501-1-6. License Violation.

A. When a program violates the terms of the license, the Office, with notification to the appropriate Division, may deny, condition, suspend, or revoke a license for the following:

1. violation of the Rules of the Office,

2. conduct in the provision of service that is or may be harmful to the health or safety of persons receiving services, or

3. exercise of professional judgment of license specialist in coordination with Office Director.

B. Sanctions

1. Denial: The Office shall give written notice of the denial of an initial or renewal application within 30 days of the date of decision. The notice shall contain a statement of the basis of the denial and shall inform the applicant of the right to request an administrative hearing as provided by DHS policy. The applicant must make written request to the Office Director for a hearing within ten days of the receipt of the Notice of Agency Action.

2. Conditional: The Office shall give written Notice of Agency Action of the conditional status of an existing license. The notice shall contain statement of cause for action and shall inform licensee of the right to an administrative hearing for appeal.

a. A conditional status allows a program to continue operation, if there is no immediate threat to the health or safety of consumers.

b. The duration of the conditional status shall be determined by the Office. The period shall allow sufficient time for correction of the noted deficiencies and the completion of an investigation of abuse or neglect.

3. Suspension: The Office shall give written Notice of Agency Action of a suspension of an existing license. The notice shall contain a statement of cause for action and shall inform the licensee of the right to an administrative hearing or appeal. A suspension of a license prohibits the operation of the program and State payment for consumers.

a. The duration of the suspension shall be determined by the Office. The suspension period shall allow sufficient time for correction of the noted deficiencies or the completion of an investigation.

b. A license may be suspended a maximum of two times. A third time violation of rules of the Office, which would normally result in a suspension will result in revocation.

c. The suspension shall be in force until an administrative hearing has been conducted and a final decision has been made, or the program has complied with issues leading to suspension.

4. Revocation: The Office shall give written Notice of Agency Action of a revocation of an existing license. The notice shall contain a statement of cause for action and shall inform the licensee of the right to a hearing or appeal.

a. A revocation of a license prohibits the operation of the program. The revocation shall be final.

b. The program will be allowed to apply for a new license, after a minimum of one year. However, after two revocations, an application for a license shall not be considered.

C. The sanctions may be one of the following:

1. Prospective: A licensee whose license may be suspended or revoked, shall receive written Notice of Agency Action at least 30 days before the effective action of such suspension or revocation. The notice of suspension or revocation shall state the basis for action.

a. The licensee shall meet the requirements set forth in the notice, or the suspension or revocation shall automatically become final. The notice shall also advise the licensee of the right to an administrative hearing.

b. DHS shall not place any consumer in a facility which has been notified of prospective suspension or revocation.

2. Immediate: If the Office Director finds that the health or safety of the consumers so require, the immediate suspension or revocation of a license shall be ordered. The Notice of Agency Action shall contain a statement of the basis for the order and shall inform licensee of the right to an administrative hearing. The final decision to suspend or revoke a license shall be made by the Office Director with notification to the appropriate Division.

D. Notice: All written Notices of Agency Action shall be sent by certified mail or hand delivered to the address shown on the license or application.

R501-1-7. Program Appeal.

A. Request for Hearing: A licensee whose license is being denied, suspended or revoked may request an informal administrative hearing. The request must be in writing, contain a statement of the problem, and be sent to the Office Director within ten days of the report of the adverse action. The Office will follow the procedure for program hearings according to Utah Administrative Practice Act in accordance with DHS policy.

B. A hearing shall be conducted by the Office Director when the Office staff has initiated the cause for action.

C. Grievances: If the licensee has other grievances that result in a written request for a hearing not related to suspension, revocation, or denial of a license, but which are related to the operation of the program, the request should be for a conference with the Office Director.

R501-1-8. Variances.

A variance is an authorized deviation from the specifics of a Rule.

A. The Office Director, or designee, may grant a variance to rules of the Office, if it is in the best interests of the consumer and maintains basic health and safety requirements with notice to the appropriate Division.

B. The licensee must submit a written request for a variance, describing the method of fulfilling the intent of the Rules of the Office to maintain the health and safety of the consumer.

C. The Office shall notify the licensee of the approval or denial of the conditions of the variance, in writing, within 30 days.

D. The Office shall maintain a record, and submit a copy to the appropriate Division.

R501-1-9. Allegations of Abuse or Neglect.

When allegations of abuse, neglect, or exploitation, pursuant to Sections 62A-4a-413, 62A-3-311.1, or 62A-2-120,121, of the Utah Code are made against a program, the following shall apply:

A. Office staff shall immediately notify the appropriate investigative agency, according to the Abuse and Neglect Reporting Requirements.

B. During the investigation the Office staff may, after consultation with the Director or designee, place a license on conditional status.

1. The Office staff shall inform the program with a written Notice of Agency Action.

2. The notice shall include the following:

a. a statement that the license will be placed on conditional status during the investigation of abuse, neglect, or exploitation, and

b. a statement of cause for conditional status and a plan of corrective action for the program.

3. The Notice of Agency Action shall be sent by certified mail or hand delivered.

4. A copy of the Notice of Agency Action shall be sent to the appropriate Division representative.

C. When notified of the results of the investigation by the investigating agency, the Office staff shall take the following action:

1. If substantiated, the license may be suspended or revoked.

2. If unsubstantiated, the license shall return to its former status.

KEY: licensing, human services
October 16, 1998 62A-2-101 et seq.
Notice of Continuation September 2, 1997

R512. Human Services, Child and Family Services.
R512-25. Child Protective Services Notification and Due Process.
R512-25-1. Scope.

A. The Division of Child and Family Services shall act in accordance with Section 62A-4a-409, and investigate all reports of child abuse, neglect, or dependency. Each investigation shall determine the validity of the report and make a substantiated or an unsubstantiated finding. This rule establishes an appeal for individuals who disagree with a Division substantiated finding of abuse, neglect or dependency in accordance with Federal law, 42 United States Code, Section 5106a.

R512-25-2. Definitions.

In addition to terms defined in Section 62A-4a-101,

A. Division means the Division of Child and Family Services within the Department of Human Services.

B. Substantiated finding means an official finding at the completion of an investigation that there is a reasonable basis to conclude that child abuse, neglect, or dependency occurred.

C. Dependency means a condition of a child who is homeless or without proper care, or is forced or obligated to be supported by a person other than the a parent or guardian.

R512-25-3. Notice of Agency Action.

A. A Notice of Agency Action shall be sent in accordance with Section 63-46b-3 to the person identified in the a substantiated finding as responsible for child abuse, neglect or dependency.

R512-25-4. Challenge of Substantiated Finding.

A. A person may make a request to challenge a substantiated finding within 30 days of:

1. a notice having been received pursuant to R512-25-3 of this rule;

2. a finding by a court of competent jurisdiction based upon the same underlying facts that:

a. child abuse or neglect or dependency did not occur; or

b. the person was not responsible for the child abuse or neglect or dependency that did occur, or that was alleged.

3. criminal charges were dismissed or a verdict of not guilty based on the same underlying facts.

B. The 30-day requirement of R512-25-3 shall be extended for good cause shown that compliance was virtually impossible or unreasonably burdensome.

C. The Division may approve or deny a request to change the substantiated finding.

D. If the Division denies the request to change the substantiation or fails to act within 30 days after receiving a request submitted under R512-25-4, the Office of Administrative Hearings within the Department of Human Services shall schedule an adjudicative proceeding pursuant to Section 63-46b.

R512-25-5. Conduct and Outcome of Hearing.

A. In an adjudicative proceeding held pursuant to R512-25-4(D), the Division shall prove by a preponderance of evidence that there is a reasonable basis to conclude that:

1. child abuse or neglect occurred;

2. the person was substantially responsible for the abuse or neglect that occurred.

B. The administrative hearing officer may make a determination based solely upon the statement of the child.

C. If more than one substantiated finding is adjudicated during a single adjudicative proceeding, each substantiated finding shall be adjudicated independently.

D. If the person's challenge is successful at the adjudicative proceeding, the Division will change the designation substantiated finding to an unsubstantiated finding in agency records.

R512-25-6. Denial of or Stay of Adjudicative Proceeding.

A. A person may not make a request to challenge a substantiated finding under R512-25-4 if, at any time, a court of competent jurisdiction has made a determination based on the same underlying facts that:

1. the child abuse or neglect occurred; and

2. the person was substantially responsible for the abuse or neglect that occurred.

B. An adjudicative proceeding held pursuant to R512-25-4 may be stayed during the time a judicial action is pending.

KEY: child welfare, child abuse
January 21, 1999 **42 USC 5106(a)**
62A-4a-106
62A-4a-116
62A-4a-116.5
63-46b-3

R527. Human Services, Recovery Services.
R527-200. Administrative Procedures.
R527-200-1. Authority.

This rule establishes procedures for informal adjudicative proceedings as required by Section 63-46b-5 of the Administrative Procedures Act.

R527-200-2. Definitions.

1. Terms used in this rule are defined in Sections 62A-11-202, 62A-11-303, and 63-46b-2.

2. In addition,

a. "office" means the Office of Recovery Services;

b. "participate" means

(i) in a proceeding that was initiated by a notice of agency action, present relevant information to the presiding officer within the time period described by statute or rule for requesting a hearing; and

(ii) if a hearing is scheduled, participate means attend the hearing;

c. "party" means the Office of Recovery Services and the respondent.

d. in all proceedings except those conducted to determine the noncooperation of a IV-A or Non-IV-A Medicaid recipient or applicant, "party" does not mean the obligee, also called the custodial parent.

e. in a proceeding to determine the noncooperation of a IV-A or Non-IV-A Medicaid recipient or applicant, the recipient or applicant is the respondent and is therefore a "party".

R527-200-3. Purpose.

The purpose of this rule is to:

1. establish the form of proceedings;

2. provide procedures for requesting and obtaining a hearing when a proceeding is initiated by a notice of agency action;

3. provide procedures and standards for orders resulting from the administrative process;

4. provide procedures for informal proceedings;

5. provide procedures for the conduct of hearings, conferences, and administrative reviews;

6. provide procedures for requesting reconsideration;

7. provide procedures for a motion to set aside a default order;

8. provide procedures for amending an administrative order;

9. provide procedures for setting aside an administrative order; and

10. provide procedures for requesting judicial review.

R527-200-4. Designation of Presiding Officers.

The following persons are designated presiding officers in adjudicative proceedings:

1. team agents;

2. team managers;

3. program coordinators;

4. program specialists;

5. quality assurance specialists;

6. associate regional directors;

7. regional directors;

8. directors;

9. other persons designated by the director of the Office of Recovery Services.

R527-200-5. Form of Proceeding.

All adjudicative proceedings commenced by the office through a notice of agency action, or commenced by other persons affected by the office's actions through a request for agency action shall be informal adjudicative proceedings.

R527-200-6. Adjudicative Proceedings.

The following actions are considered to be adjudicative proceedings:

1. hearings, conferences, or administrative reviews to establish, modify, or renew child support orders;

2. conferences to determine paternity;

3. conferences or hearings to establish a judgment for genetic testing costs;

4. conferences or hearings to establish a judgment for birth expenses;

5. conferences or hearings to establish, modify, or renew an order regarding liability for medical and dental expenses of a dependent child;

6. administrative reviews to establish an order when a notice to enroll a child in a medical insurance plan is contested;

7. conferences or hearings to establish an order against a garnishee enforcing an administrative garnishment;

8. administrative reviews to determine whether the information concerning a support debt which will be reported to consumer reporting agencies is accurate;

9. conferences or hearings to establish the cause of an overpayment obligation, and to modify, or renew the obligation;

10. hearings, conferences, or administrative reviews to amend an administrative order; and

11. hearings, conferences, or administrative reviews to set aside an administrative order.

12. administrative reviews to establish an order which determines past-due support following a request for agency action.

13. administrative reviews to establish an order when an office determination of noncooperation is contested by IV-A or Non-IV-A Medicaid recipients.

14. conferences or hearings to establish a judgment against a responsible party for costs and/or fees, and to impose penalties associated with legal action taken by the office.

R527-200-7. Service of Notice and Orders.

Notices, orders, written decisions, or any other documents for which service is required or permitted to be made by Section 63-46b may be served using methods provided by Section 63-46b or the Utah Rules of Civil Procedure.

R527-200-8. Procedures for Informal Adjudicative Proceedings.

The procedures for informal adjudicative proceedings are as follows:

1. In proceedings initiated by a notice of agency action, t he presiding officer will issue an order of default unless the respondent does one of the following in response to service of

the notice:

a. pays the entire amount in full;

b. participates as provided in R527-200-12;

c. or, for overpayment programs, requests a hearing as provided in R527-200-9.

2. In proceedings initiated by a notice of agency action, the presiding officer shall schedule a hearing if available under R527-200-9 and the office receives the respondent's written request:

a. within 30 days of service of notice of agency action; or

b. before an order is issued by the presiding officer.

3. In administrative garnishment proceedings, the presiding officer shall schedule an administrative review if the office receives the obligor's written request for agency action within 10 days of the financial institution sending notice to the obligor of an administrative garnishment, or if the obligor requests the administrative review prior to any request by the garnishee for the issuance of an order to the garnishee to pay the office;

4. Within a reasonable time after the close of an informal adjudicative proceeding, the presiding officer shall issue a signed order in writing which states the following:

a. the decision;

b. the reason for the decision;

c. a notice of the right to request reconsideration and the right to petition for judicial review; and

d. the time limits for requesting reconsideration or filing a petition for judicial review.

5. The presiding officer's order shall be based on the facts appearing in the agency's case records and on the facts presented in evidence at any hearings, conferences, or administrative reviews.

6. A copy of the presiding officer's order shall be promptly mailed to each of the parties.

R527-200-9. Availability of a Hearing or Administrative Review in Informal Adjudicative Proceedings.

1. A hearing before a presiding officer in the Office of Administrative Hearings, Department of Human Services is permitted in an informal adjudicative proceeding if:

a. the proceeding was initiated by a notice of agency action; and

b. the respondent in a properly filed request for hearing or in the course of participation raises a genuine issue as to a material fact as provided in R527-200-10; and

c. for child support services, participates in a preliminary agency conference.

2. An administrative review before a presiding officer in the Office of Recovery Services, Department of Human Services is permitted if an informal adjudicative proceeding is initiated by a request for agency action.

a. The presiding officer shall conduct a review of all documentation provided by the requesting party and in the agency files, and issue a Decision and Order stating the decision and the reasons for the decision.

b. The requesting party shall not be required to appear, either in person or through representation when the administrative review is conducted, but may choose to attend.

R527-200-10. Hearings in Informal Adjudicative Proceedings.

1. In proceedings initiated by a notice of agency action, all hearing requests shall be referred to the presiding officer appointed to conduct hearings.

2. The presiding officer shall give timely notice of the date and time of the hearing to all parties.

3. Before granting a hearing in a case referred, the presiding officer appointed to conduct the hearing may decide whether the respondent raises a genuine issue as to a material fact. If the presiding officer determines that there is no genuine issue as to a material fact, he may deny the request for hearing, and close the adjudicative proceeding.

4. If the respondent objects to the denial of the hearing, he may raise that objection as grounds for relief in a request for reconsideration.

5. There is no genuine issue as to a material fact if:

a. the evidence gathered by the office and the evidence presented for acceptance by the respondent are sufficient to establish the obligation of the respondent under applicable law; and

b. no other evidence in the record or presented for acceptance by the respondent in the course of respondent's participation conflicts with the evidence to be relied upon by the presiding officer in issuing an order.

6. Evidence upon which a presiding officer may rely in issuing an order when there has been no hearing:

a. documented wage information from employers or governmental sources;

b. failure of the respondent to produce upon request of the presiding officer canceled checks as evidence of payments made;

c. failure of the respondent to produce a record kept by the clerk of court, a financial institution, or the office, showing payments made;

d. failure of the respondent to produce a written agreement in a Non-AFDC case which was signed by both the absent parent and the custodial parent providing for an alternate means of satisfying a child support obligation;

e. birth certificates of the children whose support is sought from the respondent;

f. certified copies of the latest support orders;

g. other applicable documentation.

R527-200-11. Telephonic Hearings.

Telephonic hearings will be held at the discretion of the Office of Administrative Hearings, Department of Human Services.

R527-200-12. Procedures and Standards for Orders Resulting from Service of a Notice of Agency Action.

1. If the respondent agrees with the notice of agency action, he may stipulate to the facts and to the amount of the debt and current obligation to be paid. A stipulation, and judgment and order based on that stipulation is prepared by the office for the respondent's signature. Orders based on stipulation are not subject to reconsideration or judicial review.

2. If the respondent participates by attending a preliminary conference or otherwise presents relevant information to the

presiding officer, but does not reach an agreement with the office or is unavailable to sign a stipulation, and does not request a hearing, the presiding officer shall issue a judgment and order based on that participation.

3. If the respondent participates in any way after receiving a notice of agency action to establish paternity and child support, and fails to respond to subsequent notices for genetic testing or test results, the presiding officer shall issue a judgment and order based on the failure of the respondent to respond to the subsequent notices.

4. If the respondent requests a hearing and participates by attending a preliminary agency conference, and after that conference the respondent does not agree with the notice of agency action, and participates by attending the hearing, the presiding officer who conducts the hearing shall issue an order based upon the hearing.

5. If the respondent fails to participate as follows, the appropriate presiding officer may issue an order of default and default judgment:

a. the respondent fails to participate by presenting relevant information and does not request a hearing in response to the notice of agency action;

b. after proper notice the respondent fails to attend a preliminary conference scheduled by the presiding officer to consider matters which may aid in the disposition of the action; or

c. after proper notice the respondent fails to attend a hearing scheduled by the presiding officer pursuant to a written request for a hearing.

6. The default judgment is taken for the same amount and for the same months specified in the notice of agency action which was served on the respondent. The judgment cannot be taken for more than the amount specified in the notice of agency action. If there is no previous court order and the best available information supports the amount, the judgment may be taken for less than the amount specified in the notice of agency action. The respondent may seek to have the default order set aside, in accordance with Section 63-46b-11.

7. If a respondent's request for a hearing is denied under R527-200-10, the presiding officer issues a judgment and order based upon the information in the case record.

8. Notwithstanding any order which sets payments on arrearages, the office reserves the right to periodically report the total past-due support amount to consumer reporting agencies, intercept state tax refunds and federal tax refunds where permitted by federal regulation, levy upon real and personal property to satisfy judgments, and to reassess payments on arrearages.

R527-200-13. Conduct of Hearings, Conferences, and Administrative Reviews in Informal Adjudicative Proceedings.

1. The hearing, conference, or administrative review shall be conducted by a duly qualified presiding officer. The presiding officer shall not have been involved in preparing the information alleged in the notice which is the basis of the adjudicative proceeding. No presiding officer shall conduct a hearing, conference, or administrative review in a contested case if it is alleged and proved that good cause exists for the removal of the presiding officer assigned to the case. The party or representative requesting the change of presiding officer shall make the request in writing, and the request shall be filed and called to the attention of the presiding officer not less than 24 hours in advance of the hearing.

2. Duties of the presiding officer when conducting a hearing:

a. Based upon the notice of agency action, objections thereto, if any, and the evidence adduced at the hearing, the presiding officer shall determine the liability and responsibility, if any, of the respondent under Section 62A-11-304.2 and 62A-11-304.3. Following determination of liability, the presiding officer shall refer the obligor to the team handling the case for determination of acceptable periodic payment or alternative means of satisfaction of any arrearage obligation.

b. The presiding officer conducting the hearing may:

(i) regulate the course of hearing on all issues designated for hearing;

(ii) receive and determine procedural requests, rule on offers of proof and evidentiary objections, receive relevant evidence, rule on the scope and extent of cross-examination, and hear argument and make determination of all questions of law necessary to the conduct of the hearing;

(iii) request testimony under oath or affirmation administered by the presiding officer;

(iv) upon motion, amend the notice of agency action to conform to the evidence.

3. Rules of Evidence in hearings:

a. Discovery is prohibited, but the office may issue subpoenas or other orders to compel production of necessary evidence.

b. Any person who is a party to the proceedings may call witnesses and present such oral, documentary, and other evidence and comment on the issues and conduct such cross-examination of any witness as may be required for a full and true disclosure of all facts relevant to any issue designated for fact hearing and as may affect the disposition of any interest which permits the person participating to be a party.

c. Any evidence may be presented by affidavit rather than by oral testimony subject to the right of any party to call and examine or cross-examine the affiant.

d. All relevant evidence shall be admitted.

e. Official notice may be taken of all facts of which judicial notice may be taken in the courts of this state.

f. All parties shall have access to information contained in the office's files and to all materials and information gathered in the investigation, to the extent permitted by law and subject to R527-5.

g. Intervention is prohibited.

h. In child support cases the hearing shall be open to the obligee and all parties, as defined in R527-200-2.

4. Rights of the parties in hearings: A respondent appearing before the presiding officer for the purpose of a hearing may be represented by a licensed attorney, or, after leave of the presiding officer, any other person designated to act as the respondent's representative for the purpose of the hearing. The office's supporting evidence for the office's claim shall be presented at a hearing before a presiding officer by an agent or representative from the office. The supporting evidence may, at

the office's discretion, be presented by a representative from the office of the Attorney General or by a staff attorney.

R527-200-14. Agency Review.

Agency review shall not be allowed. Nothing in this rule prohibits a party from filing a request for reconsideration or for judicial review as provided in Sections 63-46b-13 and 63-46b-14.

R527-200-15. Reconsideration.

Either the respondent or the office may request reconsideration in accordance with Section 63-46b-13 once during an informal adjudicative proceeding. The obligee is not a party to the proceedings; therefore, the obligee may not request reconsideration.

R527-200-16. Setting Aside Administrative Orders.

1. The office may set aside an administrative order for any of the following reasons:

a. A rule or policy was not followed when the order was taken.

b. The obligor was not properly served with a notice of agency action.

c. The obligor was not given due process.

d. The order has been replaced by a judicial order which covers the same time period.

e. If a default judgment and order was entered and the alleged father later submitted to genetic testing and was excluded from being the father, the presiding officer shall set aside the order.

2. The office shall notify the obligor of its intent to set the order aside by serving the obligor with a notice of agency action. The notice shall be signed by the presiding officer at the level which issued the order.

3. If after serving the obligor with a notice of agency action, the presiding officer determines that the order shall be set aside, the office shall notify the obligor.

R527-200-17. Amending Administrative Orders.

1. The office may amend an order for reasons including the following:

a. A clerical mistake was made in the preparation of the order.

b. The time periods covered in the order overlap the time periods in another order for the same participants.

2. The office shall notify the obligor of its intent to amend the order by serving the obligor with a notice of agency action. The notice shall be signed by the presiding officer at the level which issued the order.

3. If after serving the obligor with a notice of agency action, the presiding officer determines that the order shall be amended, the office shall provide a copy of the amended order to the obligor.

KEY: administrative law, child support, overpayment*, welfare fraud

January 4, 1999	**62A-11-203**
Notice of Continuation November 7, 1996	**62A-11-304.1**
	62A-11-304.2

R527. Human Services, Recovery Services.
R527-210. Guidelines for Setting Child Support Awards.
R527-210-1. Awarding Tax Exemption for Dependent Children.

Section 78-45-7.21 requires that the court or administrative agency assign the tax exemption for dependent children in any final order established on or after July 1, 1994. For tax exemption purposes, an administrative order is not considered a final order unless it is based on a voluntary paternity declaration or an administrative determination of paternity.

R527-210-2. Reduction for Extended Visitation.

1. Extended visitation is defined as the time period during which the child is with the noncustodial parent for at least 25 of any 30 consecutive days. Normal visitation and holiday visits to the custodial parent shall not be considered an interruption of the consecutive day requirement.

2. If the child support order provides that the base child support award will be reduced for each child for extended visitation and extended visitation is exercised, the office shall reduce the support obligation accordingly.

3. If the support order does not specifically provide that the base child support award will be reduced for extended visitation and the child is a recipient of financial public assistance, the Office of Recovery Services/Child Support Services (ORS/CSS) shall not reduce the support obligation.

R527-210-3. Accountability of Support Provided to Benefit Child.

At the time of issuing an administrative order for current support, ORS/CSS may include in the order, upon the petition of the obligor, a provision for the obligee to furnish an accounting of amounts provided for the child's benefit to the obligor. In order to be eligible, the obligor must be current on all child support; the obligor must not have a child support arrearage.

KEY: child support

August 15, 1997	**62A-11-304.2**
Notice of Continuation January 26, 1999	**78-45-7.11**
	78-45-7.20
	78-45-7.21

R527. Human Services, Recovery Services.
R527-378. Withholding of Social Security Benefits.
R527-378-1. Withholding of Social Security Benefits.

If social security is the obligor's sole means of support and the case is an arrears only case, the notice to the Social Security Administration to withhold income shall be limited to 25 percent of the social security benefit amount.

KEY: child support, social security
January 15, 1999 62A-11-107
Notice of Continuation December 4, 1997

R590. Insurance, Administration.
R590-160. Administrative Proceedings.
R590-160-1. Authority.

This rule is promulgated by the Insurance Commissioner under Subsection 31A-2-201(3)(a), that authorizes rules to implement the provisions of the Utah Insurance Code Subsection 63-46b-1(6), that allows the establishment of rules governing adjudicative proceedings, and Subsection 63-46b-5(1) and other applicable sections of Chapter 46b of Title 63.

R590-160-2. Purpose and Scope.

This rule establishes rules governing the designation and conduct of adjudicative proceedings before the insurance commissioner or his designee. Public hearings under Section 63-46a-5 are not covered by this rule.

R590-160-3. Definitions.

A. "Complainant" is the Utah Department of Insurance in all actions against a licensee or other person who has been alleged to have committed any act or omission in violation of the Utah Insurance Code or Rules, or order of the commissioner.

B. "Intervenor" means a person permitted to intervene in a proceeding before the commissioner.

C. "Petitioner" is a person seeking agency action.

D. "Person" is defined in Subsection 31A-1-301(60).

E. "Respondent" means a person against whom an order or a proceeding is directed.

F. "Staff" means the Insurance Department staff. The staff shall have the same rights as a party to the proceedings.

G. "Presiding Officer" means the person designated by the commissioner to decide adjudicative proceedings before the commissioner, either generally or for a specific adjudicative proceeding.

H. "Department Representative" means the person who will represent the interests of the Utah Department of Insurance in any administrative action before the commissioner.

I. "Existing Disability" means any suspension, revocation or limitation of a license or certificate of authority or any limitation on a right to apply to the department for a license or certificate of authority.

R590-160-4. Designations of Proceedings.

A. All actions pursuant to initial determinations upon applications for a license or a certificate of authority or any petition to remove an existing disability are designated as informal adjudicative proceedings.

B. All actions that seek to suspend or revoke or limit an existing license, other than placing a license on probation, are formal adjudicative proceedings.

C. All other agency actions are informal.

D. Any proceeding may be converted from a formal proceeding to an informal proceeding or from an informal proceeding to a formal proceeding upon motion of a party or sua sponte by the presiding officer, subject to the provisions of Subsection 63-46b-4(3).

R590-160-5. Rules Applicable to All Proceedings.

A. Liberal Construction. These rules shall be liberally construed to secure just, speedy and economical determination of all issues presented to the commissioner.

B. Deviation from Rules. The commissioner or presiding officer may permit a deviation from these rules insofar as he may find compliance to be impracticable or unnecessary or for other good cause.

C. Computation of Time. The time within which any act shall be done, as herein provided, shall be computed by excluding the first day and including the last unless the last day is Saturday, Sunday or a legal holiday, and then it is excluded and the period runs until the end of the next day that is not a Saturday, Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

D. Parties.

1. Parties to a proceeding before the commissioner may be:

a. Any person, including the Insurance Department, who has a statutory right to be a party or any person who has a legally protected interest or right in the subject matter that may be affected by the proceeding.

b. Any person may become an intervening party when he has established to the satisfaction of the commissioner or presiding officer that he has a substantial interest in the subject matter of the proceeding and that intervention will be relevant and material to the issues before the commissioner;

c. The Insurance Department staff;

d. Other persons permitted by the commissioner or presiding officer to enter an appearance.

2. Classification. Participants in a proceeding shall be styled "applicants", "petitioners", "complainants", "respondents", or "intervenors", according to the nature of the proceeding and the relation of the parties thereto.

E. Appearances and Representation.

1. Making an Appearance. A party enters his appearance by filing an initial request for agency action or an initial response to a notice of agency action at the beginning of the proceeding, giving his name, address, telephone number, and stating his position or interest in the proceeding.

2. Representation of Parties. An attorney who is an active member of the Utah State Bar may represent any party. An individual who is a party to a proceeding may represent himself or herself. An officer duly authorized by corporate resolution may represent a corporation. A general partner may represent a partnership.

3. An attorney or other authorized representative authorized in Subsection 2 above, if previous appearance has not been entered, shall file a Notice of Appearance with the commissioner or presiding officer no later than five days before any hearing at which he shall appear.

4. Insurance Department Staff. Members of the Insurance Department staff may appear either in support of or in opposition to any cause, or solely to discover and present facts pertinent to the issue.

F. Pleadings.

1. Pleadings Enumerated. Pleadings before the commissioner shall consist of petitions, complaints, responsive pleadings, motions, stipulations, affidavits, memoranda, orders, or other notices used by the commissioner in initiating a

proceeding.

2. Docket Number. Upon the filing of a pleading initiating a proceeding, the commissioner shall assign a docket number to the proceeding that shall consist of the last two digits of the year that the pleading was filed followed by a dash and a number showing its chronological position among the proceedings initiated during the year (example: Docket No. 93-100).

3. Title. Pleadings before the commissioner shall be titled in substantially the following form:

a. Centered, heading: BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF UTAH;

b. Left margin, identification of parties: (COMPLAINANT:, RESPONDENT:, PETITIONER:, etc.);

c. Right margin, identification of type of action: (NOTICE OF HEARING, ORDER TO SHOW CAUSE, etc.);

d. Right margin, docket number.

4. Size and Content of Pleadings. Pleadings shall be typewritten, double-spaced on white 8-1/2 x 11-inch paper. They must identify the proceedings by title and docket number, if known, and shall contain a clear and concise statement of the matter relied upon as a basis for the pleading, together with an appropriate request for relief when relief is sought.

5. Amendments to Pleadings. The presiding officer may allow pleadings to be amended or corrected. Amendments to pleadings shall be allowed in accordance with the Utah Rules of Civil Procedure.

6. Signing of Pleadings. Pleadings shall be signed and dated by the party or by the party's attorney or other authorized representative and shall show the signer's address and telephone number. The signature shall be deemed to be a certificate by the signer that the signer has read the pleading and that, to the best of the signer's knowledge and belief, there are good grounds in support of it.

7. Petitions. All pleadings praying for affirmative relief (other than applications, complaints, notices of adjudicative proceedings, or responsive pleadings), including requests to intervene and requests for rehearing shall be styled "petitions."

8. Motions.

a. No proceeding before the commissioner may be initiated by a motion.

b. Motions, other than at a hearing, shall be in writing and submitted for ruling on either written or oral argument. The filing of affidavits in support of the motions or in opposition thereto may be permitted by the presiding officer. Oral motions may be allowed at a hearing at the discretion of the presiding officer.

c. Any motion directed toward a hearing shall be filed ten days prior to the date set for the hearing.

G. Filing and Service.

1. A document shall be deemed filed when it is received by the department.

2. An original and one copy of any pleading shall be filed with the department and a copy served upon all other parties to the proceeding. The presiding officer may direct that a copy of all pleadings and other papers be made available by the party filing the same to any person the presiding officer determines may be affected by the proceedings and requests copies thereof.

3. Service may be made upon any party or other person by ordinary mail, by certified mail with return receipt requested, in accordance with the Utah Rules of Civil Procedure, or by any person specifically designated by the commissioner. Service upon licensees, if by mail, shall be to the business address on file with the department.

4. There shall appear on all documents required to be served a Certificate of Service or Certificate of Mailing in substantially the following form: I do hereby certify that on the day of , 19 , I (served or mailed by regular mail or certified mail return receipt requested, postage prepaid) (the original/a true and correct copy) of the foregoing (document title) to (name and address), (signed).

5. When any party has appeared by attorney or other authorized representative, service upon the attorney or representative constitutes service upon the party.

H. Presiding Officers - Disqualification for Bias.

1. Any party to a proceeding may move for the disqualification of an assigned presiding officer by filing with the commissioner an Affidavit of Bias alleging facts sufficient to support disqualification.

2. The commissioner shall determine the issue of disqualification as a part of the record of the case, and may request and receive the additional evidence or testimony as deemed necessary to make this determination. The hearing will not proceed until the commissioner makes this determination. No appeal shall be taken from the commissioner's Order on the determination of disqualification for bias except as part of a Final Order.

a. If the commissioner finds that a motion for disqualification was filed without a reasonable basis or good faith belief in the facts asserted, the commissioner may order that the offending party be subject to the appropriate sanctions as are authorized to be imposed by statute or these rules.

b. When a presiding officer is disqualified or it becomes impractical for the presiding officer to continue, the commissioner shall appoint another presiding officer.

3. A presiding officer may at any time voluntarily disqualify himself or herself.

I. Ex Parte Contacts Prohibited. Except as to matters that by law are subject to disposition on an ex parte basis, the commissioner and the presiding officer involved in a hearing shall not have ex parte contact with persons and parties, including staff members of the department appearing as parties to a proceeding, directly or indirectly involved in any matter that is the subject of a pending administrative proceeding unless all parties are given notice and an opportunity to participate.

J. Standard of Proof. All issues of fact in administrative proceedings before the commissioner shall be decided upon the basis of a preponderance of the evidence standard.

R590-160-6. Rules Applicable to Formal Proceedings.

A. Hearings.

1. Conduct of Hearing. All hearings shall be conducted pursuant to the provisions of Section 63-46b-8.

2. Continuance. If application is made to the presiding officer within a reasonable time prior to the date of hearing, upon proper notice to the other parties, the presiding officer may grant a motion for continuance or other change in the time and place of hearing, upon good cause shown. The presiding officer may also, for good cause, continue a hearing in process if such

continuance will not substantially prejudice the rights of any party.

3. Public Hearings. Unless ordered by the presiding officer for good cause, all hearings shall be open to the public.

4. Telephonic Testimony. The presiding officer may, when the identity of a witness can be established with reasonable assurance, take testimony telephonically. Telephonic testimony shall be taken under conditions that permit all parties to hear the testimony and examine or cross-examine the witness. It shall be within the discretion of the presiding officer as to whether or not telephonic testimony shall be allowed.

5. Record of Hearing.

a. Transcript of Hearing. Upon two days' notice, any party may request that, at his own expense, a certified shorthand reporter be used to record the proceedings. If such a transcript is made, the original transcript of the proceeding shall be filed with the commissioner at no cost to the commissioner. Parties wanting a copy of the certified shorthand reporter's transcript may purchase it from the reporter at the parties' own expense.

b. Recording Device. Unless otherwise ordered, the record of the proceedings shall be made by means of a tape recorder or other recording device. A duplicate copy of the tape, or other recording, will be provided by the commissioner at the request and expense of any party, providing that a copy of any transcription of any portion of the record is given at no cost to the commissioner within ten days of transcription.

6. Subpoenas and Fees.

A. Subpoenas. The commissioner or the presiding officer may issue subpoenas on his own motion or at the request of any party for the production of evidence or the attendance of any person in a formal adjudicative proceeding. Any subpoena so issued shall be served in accordance with the Utah Rules of Civil Procedure or by a person designated by the commissioner.

B. Witness Fees. Each witness who appears before the commissioner or the presiding officer shall be entitled to receive the same fees and mileage allowed by law to witnesses in a district court, to be paid by the party at whose request the witness is subpoenaed. Witnesses appearing at the request of the commissioner shall be entitled to payment from the funds appropriated for the use of the Insurance Department. Any witness subpoenaed at the request of a party other than the commissioner may, at the time of service of the subpoena, demand one day's witness fee and mileage in advance and unless such fee is tendered, that witness shall not be required to appear.

7. Discovery and Depositions. Discovery and motions thereupon shall be in accordance with the Utah Rules of Civil Procedure.

R590-160-7. Rules Applicable to Informal Proceedings.

A. An informal proceeding may be commenced by the department by the issuance of a Notice of Informal Proceeding and Order where it appears to the department that there are no disputed issues or in matters of technical or minor violation of the code. The Order shall be based upon the information contained in the files of the department, or known to the commissioner, and shall constitute a "proposed order" that shall become final 15 days after delivery or mailing to the respondents unless a written request for a hearing is received in the offices of the department prior to the expiration of 15 days.

B. Informal proceedings commenced by the filing of a request for agency action upon the denial of an application for a license or certificate of authority or a petition to remove an existing disability, or if commenced by the department and there are disputed issues, a notice of Informal Adjudicative Proceeding shall be issued stating the matters to be decided and an informal hearing shall be held.

C. An informal hearing shall not be of record. At an informal hearing, the presiding officer may receive testimony, proffers of evidence, affidavits and arguments relating to the issues to be decided and may issue subpoenas requiring the attendance of witnesses or the production of necessary evidence.

D. At the close of the informal hearing, the presiding officer shall issue an order based upon evidence in the department files and the evidence or proffers of evidence received at the informal hearing.

R590-160-8. Agency Review.

A. Agency review shall be available to any party to an administrative proceeding by filing a petition for review with the commissioner within 30 days of the date of the entry of the date of an order issued in that proceeding. Failure to seek agency review shall be considered a failure to exhaust administrative remedies.

B. Petitions for Review shall be filed in accordance with Section 63-46b-12.

C. Review shall be conducted by the commissioner or a person or persons he may designate, including members of department staff. If the review is conducted by other than the commissioner, the persons conducting the review shall recommend a disposition to the commissioner who shall make the final decision and shall sign the order. On review, the commissioner or his designee(s) may, at their election, accept briefs or other papers, or accept oral argument.

D. An Order on Review may affirm, reverse or amend, in whole or in part, the previous order, or remand for further proceedings or hearing.

R590-160-9. Sanctions.

In the course of any proceeding the commissioner or presiding officer may, by order, impose sanctions upon any party, parties, or their counsel for contemptuous conduct in the hearing or for failure to comply with any lawful order of the presiding officer or the commissioner. Sanctions may include deferral or acceleration of proceedings, exclusion of persons who cause disturbance of the proceeding, or imposition of special conditions upon further participation, including levy and payment of any forfeiture, special costs or expenses incurred by the commissioner or by a party as a result of noncompliance with lawful orders that were necessary to effective conduct of a proceeding. In case of persistent and intentional disregard of or noncompliance with rulings or orders, sanctions may include resolution of designated issues against the position asserted by the offending party where the contemptuous conduct or noncompliance is found to have interfered with effective development of evidence bearing on those issues. If the conduct is by a representative of a party, sanctions may include the exclusion of that representative from matters before the commissioner.

R590-160-11. Severability.

If any provision of this rule or the application thereof to any person or situation is held invalid, the remainder of the rule and the application of each provision to other persons or circumstances may not be affected thereby.

KEY: insurance

1994	**31A-2-201**
Notice of Continuation January 22, 1999	**63-46b-1**
	63-46b-5

R616. Labor Commission, Safety.
R616-3. Elevator Rules.
R616-3-1. Authority.

This rule is established pursuant to Section 34A-1-104 for the purpose of the Labor Commission ascertaining, fixing, and enforcing reasonable standards regarding elevators for the protection of life, health, and safety of the general public and employees.

R616-3-2. Definitions.

A. "ANSI" means the American National Standards Institute, Inc.

B. "ASME" means the American Society of Mechanical Engineers.

C. "Commission" means the Labor Commission created in Section 34A-1-103.

D. "Division" means the Division of Safety of the Labor Commission.

E. "Elevator" means elevator, escalator, dumbwaiter, moving walk, wheelchair lift, handicapped lift, construction hoist, personnel hoist, belt manlift, vertical reciprocating conveyor, and any other mechanism or special purpose lift that, in the opinion of the Division, could or would involve employee and personnel lifting, lowering, riding, holding, maintenance activity, or other close proximity work.

R616-3-3. Safety Codes for Elevators.

The following safety codes are adopted and incorporated by reference within this rule:

A. ASME A17.1, Safety Code for Elevators and Escalators, 1996 ed., with 1997 Supp. This code is issued every three years with annual supplements. New issues and supplements become mandatory only when a formal change is made to these rules. Elevators are required to comply with the A17.1 code in effect at the time of installation. The latest effective version of A17.1 is the 1996 edition with the 1997 supplement.

B. ASME A17.3 - 1996 Safety Code for Existing Elevators and Escalators. This code is adopted for regulatory guidance only for elevators classified as remodeled elevators by the Division of Safety.

C. ASME A90.1-1992, Safety Standard for Belt Manlifts.

D. ASME B20.1-1993, Safety Standard for Conveyors and Related Equipment only as it relates to Section 6.21 for Vertical Reciprocating Conveyors.

E. ANSI A10.4-1990, Safety Requirements for Personnel Hoists and Employee Elevators for Construction and Demolition Operations.

F. 1997 Uniform Building Code Chapters 11 and 30.

G. CABO/ANSI A117.1-1992 Accessible and Usable Buildings and Facilities, sections 4.10 and 4.11.

R616-3-4. Modifications and Variances to Codes.

A. In a case where the Division finds that the enforcement of any code would not materially increase the safety of employees or general public, and would work undue hardships on the owner/user, the Division may allow the owner/user a variance. Variances must be in writing to be effective and can be revoked after reasonable notice is given in writing.

B. No errors or omissions in these codes shall be construed as permitting any unsafe or unsanitary condition to exist.

C. The Commission may, by rule, add or delete from the applicable safety codes for any good and sufficient safety reason.

D. In the event that adopted safety codes are in conflict with one another, the ASME A17.1, Safety Code for Elevators and Escalators will take precedence. The exception to this is for compliance with the accessibility guidelines of Pub. L. No. 101-336 "The Americans with Disability Act of 1990". In this instance, the Uniform Building Code standards adopted in R616-3-3 for accessibility as applied to elevators take precedence over ASME A17.1.

R616-3-5. Exemptions.

A. These rules apply to all elevators in Utah with the following exemptions:

1. Private residence elevators installed inside a single family dwelling. Common elevators which serve multiple private residences are not exempt from these rules.

2. Elevators in buildings owned by the Federal government.

B. Owners of elevators exempted in R616-3-5.A. may request a safety inspection by Division of Safety inspectors. Code non-compliance items will be treated as recommendations by the inspector with the owner having the option as to which, if any, are corrected. Owners requesting these inspections will be invoiced at the special inspection rate. If the owner requests a State of Utah Certificate to Operate for the elevator, all of the recommendations must be completed to the satisfaction of the inspector and the owner will be invoiced the appropriate certificate fee.

R616-3-6. Inspection of Elevators, Permit to Operate, Unlawful Operations.

A. It shall be the responsibility of the Division to make inspections of all elevators when deemed necessary or appropriate.

B. Elevator inspectors shall examine conditions in regards to the safety of the employees, public, machinery, ventilation, drainage, methods of lighting, and into all other matters connected with the safety of persons using or in close proximity to each elevator, and when necessary give directions providing for the better health and safety of persons in or about the same. The owner/user is required to freely permit entry, inspection, examination and inquiry, and to furnish a guide when necessary.

C. If the Division finds that an elevator complies with the applicable safety codes and rules, the owner/user shall be issued a Certificate of Inspection and Permit to Operate.

1. The Certificate of Inspection and Permit to Operate is valid for 24 months.

2. The Certificate of Inspection and Permit to Operate shall be displayed in a conspicuous location near the elevator for the entire validation period. If the certificate is displayed where accessible to the general public, as opposed to being in the elevator machine room, it must be protected under a transparent cover.

D. If the Division finds an elevator is not being operated

in accordance with the safety codes and rules, the owner/user shall be notified in writing of all deficiencies and shall be directed to make specific improvements or changes as are necessary to bring the elevator into compliance.

E. Pursuant to Section 34A-1-407, if the improvements or changes are not made within a reasonable time, by agreement of the division and the owner, the elevator is being operated unlawfully.

F. If the owner/user refuses to allow an inspection to be made, the elevator is being operated unlawfully.

G. If the owner/user refuses to pay the required fee, the elevator is being operated unlawfully.

H. If the owner/user operates an elevator unlawfully, the Commission may order the elevator operation to cease pursuant to Section 34A-1-104.

I. If, in the judgment of an elevator inspector, the lives or safety of employees or public are, or may be, endangered should they remain in the danger area, the elevator inspector shall direct that they be immediately withdrawn from the danger area, and the elevator removed from service until repairs have been made and the elevator has been brought into compliance.

R616-3-7. Inclined Wheelchair Lift Headroom Clearance.

A. Since the incorporated safety standard (ASME A17.1) does not specify the minimum headroom clearance requirements for the installation of an inclined wheelchair lift, the following requirements must be met for inclined wheelchair lifts installed in Utah.

B. Headroom clearance for inclined wheelchair lifts throughout the range of travel shall be not less than 80 inches (2032 mm) as measured vertically from the leading edge of the platform floor.

C. For existing facilities only, in the event that it is not technically or economically feasible to provide other means of access for disabled persons, inclined wheelchair lifts may be installed if all of the following conditions are met:

1. The appropriate building inspection jurisdiction approves the use of an inclined wheelchair lift for the specific application.

2. Headroom clearance throughout the range of travel shall be not less than 60 inches as measured vertically from the leading edge of the platform floor.

3. The passenger restriction sign as required by ASME A17.1 Rule 2001.7e shall be amended as follows: "PHYSICALLY DISABLED PERSONS ONLY. NO FREIGHT. HEADROOM CLEARANCE IS LIMITED. USE ONLY IN THE SITTING POSITION".

R616-3-8. Valves in Hydraulic Elevator Operating Fluid Systems.

A. Due to the potential loss of pressure retaining capability when over torqued, bronze-bodied valves shall not be installed in the hydraulic systems of a hydraulic elevator.

B. This requirement is in effect for all new installations and remodel installations involving the hydraulic system.

C. If a bronze-bodied valve installed on an existing elevator begins to leak, that valve shall be replaced by a steel-bodied valve.

R616-3-9. Shunt Trips in Elevator Systems.

A. The means (shunt trip) to automatically disconnect the main line power supply to the elevator discussed in Rule 102.2(c)(3) of A17.1 is not required for hydraulic elevators with a rise of 50 feet or less.

R616-3-10. Hoistway Vents.

A. With regard to hoistway vents, the Division will assure that elevators meet Rule 100.4 of ASME A17.1 and the minimum area of the vent required by the Uniform Building Code. Requirements for the operation of the vent are defined by the local jurisdiction's fire marshall or building inspector.

R616-3-11. Hand Line Control Elevators.

A. Operation of a hand line control elevator is not permitted.

B. Owners of hand line control elevators are required to render the elevator electrically and mechanically incapable of operation.

R616-3-12. Remodeled Elevators.

A. When an elevator is classified as a remodeled (modernized) elevator by the Division, the components of the elevator involved in the modernization must comply with the standards of the latest version of A17.1 and A17.3 in effect at the time the remodeling of the elevator commences.

R616-3-13. Fees.

A. Fees to be charged as provided by Section 34A-1-106 and 63-38-3.2 shall be adopted by the Labor Commission and approved by the Legislature pursuant to Section 63-38-3(2).

B. The fee for the initial certification permit shall be invoiced to and paid by the company or firm installing the elevator.

C. The renewal certification permit shall be invoiced to and paid by the owner/user.

D. Any request for a special inspection shall be invoiced to and paid by the person/company requesting the inspection, at the hourly rate plus mileage and expenses.

R616-3-14. Notification of Installation, Revision or Remodeling.

A. Before any elevator covered by this rule is installed or a major revision or remodeling begins on the elevator, the Division must be advised at least one week in advance of such installation, revision, or remodeling unless emergency dictates otherwise.

R616-3-15. Initial Agency Action.

Issuance or denial of a Certificate of Inspection and Permit to Operate by the Division, and orders or directives to make changes or improvements by the elevator inspector are informal adjudicative actions commenced by the agency per Section 63-46b-3.

R616-3-16. Presiding Officer.

The elevator inspector is the presiding officer referred to in Section 63-46b-3. If an informal hearing is requested pursuant to R616-3-1, the Commission shall appoint the presiding officer

for that hearing.

R616-3-17. Request for Informal Hearing.

Within 30 days of issuance, any aggrieved person may request an informal hearing regarding the reasonableness of a permit issuance or denial or an order to make changes or improvements. The request for hearing shall contain all information required by Sections 63-46b-3(a) and 63-46b-3(b).

R616-3-18. Classification of Proceeding for Purpose of Utah Administrative Procedures Act.

Any hearing held pursuant to R616-3-10 shall be informal and pursuant to the procedural requirements of Section 63-46b-5 and any agency review of the order issued after the hearing shall be per Section 63-46b-13. An informal hearing may be converted to a formal hearing pursuant to Section 653-46b-4(3).

KEY: elevators*, certification, safety
January 28, 1999 34A-1-101 et seq.
Notice of Continuation February 5, 1997

R652. Natural Resources; Forestry, Fire and State Lands.
R652-70. Sovereign Lands.
R652-70-100. Authority.

This rule provides for the management and classification of the surface of sovereign lands in Utah, which include but are not limited to, the beds of Bear Lake, the Great Salt Lake, Utah Lake, the Jordan River, and the summer channel of the Bear River, and portions of the beds of the Green and Colorado Rivers. Should any other lakes or streams be declared navigable by the courts, the beds of such lakes or streams would fall under the authority of these rules. It also provides for the issuance of special use leases, general permits and easements on sovereign lands and the procedures and fees necessary to obtain these rights of use. This rule implements Article XX of the Utah Constitution, and Section 65A-10-1.

R652-70-200. Classification of Sovereign Lands.

Sovereign lands may be classified based upon their current and planned uses. A synopsis of some possible classes and an example of each class follows. For more detailed information, consult the management plan for the area in question.

1. Class 1: Manage to protect existing resource development uses. The Utah State Park Marinas on Bear Lake and on Great Salt Lake are areas where the current use emphasizes development.

2. Class 2: Manage to protect potential resource development options. For example, areas adjacent to Class 1 areas which have the potential to be developed.

3. Class 3: Manage as open for consideration of any use. This might include areas which do not currently show development potential but which are not now, or in the foreseeable future, needed to protect or preserve the resources.

4. Class 4: Manage for resource inventory and analysis. This is a temporary classification which allows the division to gather the necessary resource information to make a responsible classification decision.

5. Class 5: Manage to protect potential resource preservation options. Sensitive areas of wildlife habitat may fall into this class.

6. Class 6: Manage to protect existing resource preservation uses. Cisco Beach on Bear Lake is an example of an area where the resource is currently being protected.

R652-70-300. Categories of Leases, Permits, and Easements.

The division may issue Special Use Leases for terms of one to 51 years, and General Permits for terms of one to 30 years for surface uses, excluding grazing uses on sovereign lands. Grazing permits and mineral leases are considered separately under the range resource management rules and the mineral lease rules. Easement terms and conditions shall be prescribed in the particular easement document. Any lease, permit, or easement, issued by the division on sovereign lands, is subject to a public trust; and any lease, permit, or easement may be revoked at any time if necessary to fulfill public trust responsibilities.

1. Special Use Leases: Uses may include the following:

(a) Commercial: Income producing uses such as marinas, recreation piers or facilities, docks, moorings, restaurants, or gas service facilities.

(b) Industrial: Uses such as oil terminals, piers, wharves, mooring.

(c) Agricultural/Aquacultural: Any use which utilizes the bed of a navigable lake or stream to grow or harvest any plant or animal.

(d) Private Uses: Non-income producing uses such as piers, buoys, boathouses, docks, water-ski facilities, houseboats, moorings, not qualifying for a general permit under R652-70-300(2)(c).

2. General Permit: Uses may include the following:

(a) Public agency uses such as public roads, bridges, recreation areas, or wildlife refuges having a statewide public benefit.

(b) Public agency protective structures such as dikes, breakwaters and flood control workings.

(c) Private recreational uses such as any facility for the launching, docking or mooring of boats which is constructed for the use of the adjacent upland owner. An adjacent upland owner is defined as any person who owns adjacent upland property which is improved with, and used solely for a single-family dwelling.

3. Easements: Applications for easements not meeting the criteria of R652-70-300(2) shall follow the rules and procedures outlined in the division's rules governing the issuance of easements.

R652-70-400. Lease and General Permit Provisions.

The provisions for special use leases and general permits on sovereign lands shall be the same as those found in R652-30 Special Use Leases.

R652-70-500. Lease and General Permit Payments, and Audits.

The rules for lease and general permit payments and audits on sovereign lands are the same as those found in R652-30 Special Use Leases.

R652-70-600. Lease Rates.

1. Procedures for determining fair market value for surface leases are found in R652-30-400. Where these general procedures can not readily be applied, fair market value for sovereign lands may also be determined by multiplying the market value, as determined by the county assessor or, if none, then as determined by the State Tax Commission, of the adjacent upland by 30%.

2. Procedures for determining lease rates are described in R652-30 Special Use Leases. Lease rates for sovereign lands may also be determined by multiplying the fair market value, as determined by R652-70-600(1), by the current division - determined interest rate and then prorating that amount by a season of use adjustment as determined by the division.

3. Regardless of lease rate determined by R652-70-600(2), no Special Use Lease shall be issued for an amount less than the minimum lease rate determined by the division.

R652-70-700. Permit Rates.

1. No application fee shall be charged for public agency use of sovereign lands if the director determines that the agency use enhances public use and enjoyment of sovereign land.

2. No rental shall be charged for public agency use of sovereign lands if the director determines that a commensurate public benefit accrues from the use.

3. The division shall establish rental rates for any private recreational use of sovereign land as outlined under R652-70-300(2)(c). The adjacent upland owner shall also pay to the division, in accordance with its current fee schedule, the division's expenses in issuing a general permit.

4. The director may negotiate a filing fee for general permits with impacted governmental agencies. This would be a one-time package fee for currently existing uses of sovereign lands. Future application for use will be treated under the existing fee schedule or may be authorized by the amendment of an existing permit, after payment of an amendment fee pursuant to R652-4.

5. The director may enter into agreements with state agencies having regulatory authority on navigable lakes and rivers to allow these agencies to authorize public agency use of sovereign land provided that:

(a) the use is consistent with division policies and coordinated with other activities of the division;

(b) the applicant has an existing general permit in good standing under which the proposed use can be placed pursuant to R652-70-700(3);

(c) a commensurate public benefit accrues from the use, as indicated by criteria provided in the agreement;

(d) the proposed use meets the criteria required by the state agency; and

(e) the proposed use is consistent with the principles of multiple use and sustained yield as defined in Section 65A-1-1.

R652-70-800. Applicant Qualifications.

Any person who is qualified to do business in the state of Utah, and is not in default under the laws of the state of Utah relative to qualifications to do business within the state, and not in default on any previous agreements with the division, shall be a qualified applicant for a lease, permit, or easement on sovereign land.

R652-70-900. Applications.

Application for a Special Use Lease or General Permit shall be on forms provided by the division or exact copies thereof. Applications must be accompanied by plans which include references to the relationship of the proposed use to the various water surface elevations of the lake or stream as well as the relationship of the proposed use to the lake or stream boundary and vicinity at the site of the proposed use. The application must also include a description of the proposal's relationship to the classification system found in the appropriate master plan and outlined in R652-70-200. Where applicable, applications must be accompanied by a copy of local building permits, a copy of the Army Corps of Engineer permit, and a copy of any additional permits required by the Division of Parks and Recreation.

R652-70-1000. Deficient Applications.

Incomplete applications, and applications not accompanied by filing fees when required, shall not be accepted for filing. The division will notify the applicant of any deficiency.

R652-70-1100. Additional Approvals.

Nothing in these rules shall excuse a person making an application for a general permit, lease, or easement from obtaining any additional approvals lawfully required by any local, state, or federal agency, including, local zoning boards, or any other local regulatory entity, the Division of Parks and Recreation, the State Engineer, the Division of Oil, Gas and Mining, the United States Army Corps of Engineers, the United States Coast Guard, or any other local, state, or federal agency.

R652-70-1200. Dredging and Filling Requires Approval.

The placing of dredged or fill material, refuse or waste material, intended as or becoming fill material, on the beds of any navigable water in the state of Utah shall require written approval by the division.

R652-70-1300. Excavated or Dredged Channels, and Basins.

Excavated or dredged channels or basins will only be authorized by the director on a showing of reasonable necessity. Material removed during excavation or dredging shall be carried and deposited at a point above normal flood water levels, unless the applicant can satisfy the director that an alternative plan for disposition of the material is feasible and will not have an unreasonably adverse effect upon other values, including water quality. Additional conditions may be stipulated in the permit.

R652-70-1400. Approval Not Required to Repair Existing Facilities.

Approval is not required by the division to clean, maintain, or to make repairs to existing facilities authorized by a permit or lease in good standing. Approval is required to replace, enlarge, or extend the facilities, or for any activity which would disturb the surface of the bed of any navigable water, or which would cause any rock or sediment to enter a navigable body of water.

R652-70-1500. Docks, Piers, and Similar Structures.

All docks, piers, or similar structures shall be constructed to protrude as nearly as possible at right angles to the general shoreline and to not interfere with docks, piers, or similar structures presently existing or likely to be installed to serve adjacent facilities. The structures may extend to a length that will provide access to a water depth that will afford sufficient draft for water craft customarily in use on the particular body of water during the normal low water period.

R652-70-1600. Retaining Walls and Bulkheads.

Retaining walls and bulkheads will not be authorized below the ordinary high water mark without a showing of extraordinary need.

R652-70-1700. Breakwaters and Jetties.

1. Breakwaters and jetties will not be authorized below the normal low water mark without a showing of extraordinary need. This shall not apply to floating breakwaters secured by piling or other approved anchoring devices and used to protect private property from recurring wind, wave, or ice damage.

2. The director may approve streambank stabilization practices concurrently with the issuance of streambed alteration permits issued by the Division of Water Rights if the director

determines that the proposed practice is consistent with public trust management.

R652-70-1800. Overhead Clearance.

Overhead clearance between the ordinary high water mark and any structure, pipeline, or transmission line must be sufficient to pass the largest vessel which may reasonably be anticipated to use the subject waters in the vicinity of the easement.

R652-70-1900. Camping and Motor Vehicles.

The division may restrict camping on lands lying between the low water mark and the ordinary high water mark. Motor vehicles are prohibited from driving or parking on these lands at all times, except that those areas supervised by the Division of Parks and Recreation or other enforcement entity, and posted as open to vehicle use, will be open to vehicle use.

R652-70-2000. Existing Uses.

Every person using sovereign lands without a current permit or lease shall, within 60 days of notification by the division, submit an application as provided under R652-70-900.

R652-70-2100. Authorization of Existing Uses.

Authorization of the following uses may be recognized following compliance with Section R652-70-2000:

1. Uses existing on December 31, 1968, whether they were such as to be entitled to issuance of a permit or not.

2. Rights previously granted an applicant by the Division of Forestry, Fire and State Lands.

R652-70-2200. Violations.

The following acts or omissions shall subject a person to a civil penalty as provided in Sections 65A-3-1(2) and 76-3-204:

1. A violation of the provisions of Section 65A-3-1(1);

2. A violation of any special order of the director applicable to the bed of a navigable water; or

3. Refusal to cease and desist from any violation in regards to the bed of a navigable water after having been notified to do so, in writing, by the director by personal service or certified mail, within the time provided in the notice, or within 30 days of service of the notice if no time is provided.

R652-70-2300. Management of Bear Lake Sovereign Lands.

(1) Lands lying below the ordinary high water mark of Bear Lake as of the date of statehood are owned by the state of Utah and shall be administered by the division as sovereign lands.

(2) Upon application for a specific use of state lands near the boundary of Bear Lake, or in the event of a dispute as to the ownership of the sovereign character of the lands near the boundary of Bear Lake, the division may evaluate all relevant historical evidence of the lake elevation, the water erosion along the shoreline, the topography of the land, and other relevant information to determine the relationship of the land in question to the ordinary high water mark.

(3) In the absence of evidence establishing the ordinary high water mark as of the date of statehood, the division shall administer all the lands within the bed of Bear Lake and lying below the level of 5,923.68 feet above mean sea level as being sovereign lands.

(4) The division, after notice to affected state agencies and any person with an ownership in the land, may enter into agreements to establish boundaries with owners of land adjoining the bed of Bear Lake; provided that the agreements shall not set a boundary for sovereign lands below the level of 5,923.68 feet above mean sea level.

KEY: sovereign lands, permits, administrative procedure
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Notice of Continuation April 11, 1997

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 Bucks, Bulls and Once-In-A-Lifetime Proclamation and the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime 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) "Cow bison" means a female bison.

(j) "Doe pronghorn" means a pronghorn without horns or with horns five inches or shorter.

(k) "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.

(l) "Hunter's choice" means either sex may be taken.

(m) "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.

(n) "Ram" means a male desert bighorn sheep or Rocky Mountain bighorn sheep.

(o)(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.

(p) "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.

(q) "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 possessing big game.

R657-5-4. Age Requirements and Restrictions.

(1)(a) A person 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 or elk 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 or elk.

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 or larger 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 R657-5-15.

(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 or elk during the respective archery hunt dates provided in the Bucks, Bulls and Once-In-A-Lifetime 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 obtaining a Utah license, permit or tag to take big game may not be authorized to hunt on Indian reservation and trust lands. 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) Except as provided in Section 23-13-17:

(a) 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; and

(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 as provided in Subsection (c), 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 any big game hunt begins through 48 hours after any big game 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 and Use of Dogs.

(1) A person may not take big game for another person, except as provided in Section R657-5-6.

(2) A person may not use the aid of a dog to take, chase, harm or harass big game.

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, including premium limited entry, limited entry, cooperative wildlife management unit, once-in-a-lifetime, conservation, sportsman, landowner and general permits, except antlerless permits as provided in the Antlerless Addendum and Rule R657-42.

(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 and cooperative wildlife management unit; 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, except as provided in Section R657-5-66(2)(b); and

(c) general muzzleloader elk (ML300).

(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; and

(d) general muzzleloader elk (ML300).

(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 Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. Applications filled out incorrectly or received later than the date prescribed in the Bucks, Bulls and Once-In-A-Lifetime 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 to 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 premium limited entry, limited entry and resident cooperative wildlife management unit deer permits.

(c) Up to ten people may apply together for nonresident general 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.

(i) The applicant whose application is on the top of all the applications for that group, will be designated the group leader.

(ii) If any group member has an error on their application that is not corrected during the correction process, the reject box on the group leader's application will determine whether the entire group is 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 Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) Permits are drawn in the order listed in the Bucks, Bulls and Once-In-A-Lifetime 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, except nonresident general deer permits and resident cooperative wildlife management unit permits.

R657-5-31. Bucks, Bulls and Once-In-A-Lifetime Application Refunds.

(1)(a) Unsuccessful applicants who applied in the initial drawing and who applied with a check or money order will receive a refund in May.

(b) Unsuccessful applicants, who applied for remaining permits and who applied with a check or money order, will receive a refund in June.

(2) Unsuccessful applicants, who applied with a credit card, will not be charged for a permit.

(3) 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 Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. These permits may be purchased by either residents or nonresidents, except residents may not purchase nonresident general deer permits and nonresidents may not purchase resident cooperative wildlife management unit permits.

(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. The handling fees are nonrefundable.

R657-5-33. Waiting Periods for Deer.

(1) A person who obtained a premium limited entry buck, limited entry buck, cooperative wildlife management unit buck or limited entry landowner buck deer permit during the preceding two years may not apply in the bucks, bulls and once-in-a-lifetime drawing for any of these permits during the current year.

(2) A person who obtains a premium limited entry buck,

limited entry buck, cooperative wildlife management unit buck or limited entry landowner buck deer permit in the bucks, bulls and once-in-a-lifetime 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, cooperative wildlife management unit or limited entry landowner bull elk permit during the preceding four years may not apply in the bucks, bulls and once-in-a-lifetime drawing for any of these permits during the current year.

(2) A person who obtains a limited entry, cooperative wildlife management unit or limited entry landowner bull elk permit in the bucks, bulls and once-in-a-lifetime drawing, may not apply for any 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 in the bucks, bulls and once-in-a-lifetime drawing for a buck pronghorn permit during the current year.

(2) A person who obtains a buck pronghorn, cooperative wildlife management unit or limited entry landowner buck pronghorn permit in the bucks, bulls and once-in-a-lifetime drawing, may not apply for any 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 current year, 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 any bull moose, bison, Rocky Mountain bighorn sheep, desert bighorn sheep or Rocky Mountain goat through the bucks, bulls and once-in-a-lifetime drawing or from a private landowner may not apply for a once-in-a-lifetime permit for the same species in the bucks, bulls and once-in-a-lifetime 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 remaining permits sold over the counter.

(2) However, waiting periods are incurred as a result of purchasing remaining permits. 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 person who has obtained a cooperative wildlife management unit permit incurs the respective waiting period for each species as specified in R657-5-33 through R657-5-37.

(2)(a) A waiting period or once-in-a-lifetime status does not apply to purchasing landowner or cooperative wildlife management unit permits obtained through a landowner, except as provided in Subsection (b).

(b) Waiting periods are incurred for the purpose of applying in the bucks, bulls and once-in-a-lifetime drawing as a result of purchasing limited entry landowner and cooperative wildlife management unit permits obtained through a landowner.

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:

(i) each valid unsuccessful application when applying for permits in the bucks, bulls and once-in-a-lifetime drawing; or

(ii) each valid application when applying for bonus points in the bucks, bulls and once-in-a-lifetime 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 person may apply for a bonus point for:

(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 and Cooperative Wildlife Management unit; or

(iii) buck pronghorn - limited entry and Cooperative Wildlife Management unit; and

(b) only one once-in-a-lifetime, including once-in-a-lifetime Cooperative Wildlife Management unit.

(4)(a) A person may not apply in the drawing for both a premium limited entry or limited entry bonus point and a premium limited entry or limited entry permit.

(b) A person may not apply in the drawing for a once-in-a-lifetime bonus point and a once-in-a-lifetime permit.

(c) A person may not apply for a bonus point if that person is ineligible to apply for a permit for the respective species.

(d) A person may only apply for bonus points on the initial Bucks, Bulls and Once-In-A-Lifetime drawing.

(e) Group applications will not be accepted when applying for bonus points.

(5)(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.

(6)(a) Each applicant receives a random drawing number for:

(i) each species applied for; and

(ii) each bonus point for that species.

(7) Bonus points are forfeited if a person obtains a permit through the drawing for that bonus point species as provided in Subsection (2)(c), including any permit obtained after the drawing.

(8) 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.

(9) Bonus points are not transferable.

(10) Bonus points are averaged and rounded down when two or more people apply together on a group application.

(11) 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 Bucks, Bulls and Once-In-A-Lifetime 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 premium limited entry deer, limited entry deer and cooperative wildlife management unit deer areas and specific hunt areas published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game; or

(b) a deer of hunter's choice within the Wasatch Front extended archery area as provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game; or

(c) a deer of hunter's choice within the Uintah Basin extended archery area.

(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 Northern Region general archery buck deer permit may take a deer of hunter's choice within the Northern Region general hunt area.

(5) 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.

(6) 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 Bucks, Bulls and Once-In-A-Lifetime 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 hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime 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 premium limited entry deer, limited entry deer and cooperative wildlife management unit deer areas and specific hunt areas published in the Bucks, Bulls and Once-In-A-Lifetime 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 deer hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime 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 premium limited entry deer, limited entry deer and cooperative wildlife management unit deer areas and specific hunt areas published in the Bucks, Bulls and Once-In-A-Lifetime 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 Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-44. Limited Entry Buck Deer Hunts.

(1) To hunt in a premium limited entry or limited entry area, hunters must obtain the respective 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 Bucks, Bulls and Once-In-A-Lifetime 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)(a) An antlerless deer permit allows a person to take one antlerless deer, per antlerless deer tag, using any legal weapon within the area and season as specified on the permit and in the antlerless addendum.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless deer permit for a cooperative wildlife management unit as specified on the permit.

(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 Bucks, Bulls and Once-In-A-Lifetime 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.

(c) In Salt Lake County south of I-80 and east of I-15, archers may take an antlerless elk or any 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 centerfire 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 Bucks, Bulls and Once-In-A-Lifetime 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 Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game within general season elk units, except in the following areas:

(a) Salt Lake County south of I-80 and east of I-15 is restricted to muzzleloaders and shotguns with slug ammunition only;

(b) elk cooperative wildlife management units are closed; and

(c) the San Juan unit east of US-191 is closed.

(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. General Muzzleloader Elk Hunt.

(1) To hunt during the general muzzleloader elk hunt, a hunter must obtain a general muzzleloader elk permit.

(2) The dates of the general muzzleloader elk hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime 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) A person who has obtained a general 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.

(b) A person who has obtained a general muzzleloader spike bull elk permit may hunt only on a spike bull elk unit and may take only a spike bull elk. Any bull units are closed to spike bull permittees.

(4) A person who has obtained a general 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, Fillmore, Plateau, Monroe, Southwest Desert, Pilot Mountain portion of Box Elder, Beaver and muzzleloader (ML300) elk permit 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)(a) An antlerless elk permit allows a person to take one antlerless elk using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless elk permit for a cooperative wildlife management unit as specified on the permit.

(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 Bucks, Bulls and Once-In-A-Lifetime 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 or hunter's choice elk permit beginning on the date published in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game, if any of these permits are available.

(c) A person who has obtained an any bull or hunter's choice elk permit may purchase an antlerless elk permit beginning on the date published in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game, if any of these permits are available.

(d) A person who obtains a spike bull elk permit may not obtain an antlerless elk permit. A person who obtains an antlerless elk permit may not obtain a spike bull elk permit.

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) A doe pronghorn permit allows a person to take one doe pronghorn using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless moose permit for a cooperative wildlife management unit as specified on the permit.

(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)(a) An antlerless moose permit allows a person to take one antlerless moose using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management unit unless that person obtains an antlerless moose cooperative wildlife management unit as specified on the permit.

(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 required 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 Bucks, Bulls and Once-In-A-Lifetime 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 except as provided in Subsection R657-5-50(4).

(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 Bucks, Bulls and Once-In-A-Lifetime 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 hunter's choice, 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 R657-5-61(3) and R657-5-63(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 Bucks, Bulls and Once-In-A-Lifetime 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 Bucks, Bulls and Once-In-A-Lifetime 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 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 to the credit card when the application is processed. Permit fees are charged after the drawing, if successful.

(d) 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 Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) Permits are drawn in the order listed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime 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)(a) Unsuccessful applicants, who applied on the initial drawing and who applied with a check or money order will receive a refund in September.

(b) Unsuccessful applicants, who applied for remaining permits and who applied with a check or money order will receive a refund in October.

(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 as provided in the antlerless addendum, and beginning and ending on the dates provided in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime 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. The handling fees are nonrefundable.

(3) Applications are available from division offices and license agents.

R657-5-64. Application Withdrawal.

(1) A person may withdraw their application for the bucks, bulls and once-in-a-lifetime drawing or antlerless drawing by requesting such in writing by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the Salt Lake Division office.

(3) A person may not amend a withdrawn application, nor reapply after the application has been withdrawn.

(4) Handling fees will not be refunded.

R657-5-65. Special Hunts.

(1)(a) In the event that wildlife management objectives are not being met for once-in-a-lifetime, premium limited entry, or limited entry species, the division may recommend that the Wildlife Board authorize a special hunt for a specific species.

(b) The division will only utilize Subsection (1)(a) if the Bucks, Bulls and Once-In-A-Lifetime Proclamation and Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game has been published and the Bucks, Bulls and Once-In-A-Lifetime and Antlerless drawings have been completed.

(2) The special hunt season dates, areas, number of permits, methods of take, requirements and other administrative details shall be provided in an addendum to the Bucks, Bulls

and Once-In-A-Lifetime Proclamation or Antlerless Addendum of the Wildlife Board for taking big game.

(3) Permits will be allocated through a special drawing for the pertinent species.

R657-5-66. Special Hunt Application - Deadlines.

(1) Applications are available from license agents and division offices.

(2)(a) Residents and nonresidents may apply.

(b) Any person who was unsuccessful in the Bucks, Bulls and Once-In-A-Lifetime or Antlerless drawing may apply. However, any person who has obtained a permit may not apply, unless otherwise provided in this rule and the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3) 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.

(4)(a) Applications must be mailed by the date prescribed in the addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. Applications filled out incorrectly or received later than the date prescribed in the addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum of the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game 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.

(5) Bonus points will be used in the special hunt drawings to improve odds for drawing permits as provided in Section R657-5-40. However, bonus points will not be awarded for unsuccessful applications in the special hunt drawings.

(6) Any person who obtains a special hunt permit is subject to all rules and regulations provided in this rule, the Bucks, Bulls and Once-In-A-Lifetime Proclamation and Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game, unless otherwise provided in Sections R657-5-65 through R657-5-70.

R657-5-67. Fees for Special Hunt Applications.

(1) Each application must include:

(a) the permit fee for the species applied for;

(b) a $5 nonrefundable handling fee; 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 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 to the credit card when the application is processed. Permit fees are charged after the drawing, if successful.

(d) Payments 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.

R657-5-68. Special Hunt Drawing.

(1) The special hunt drawing results are posted at the Lee Kay Center, Cache Valley Hunter Education Center and division offices on the date published in the addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) 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.

R657-5-69. Special Hunt Application Refunds.

(1) Unsuccessful applicants, who applied on the initial drawing and who applied with a check or money order will receive a refund within six weeks after posting of the drawing results.

(2) Unsuccessful applicants, who applied with a credit card, will not be charged for a permit.

(3) The handling fees are nonrefundable.

R657-5-70. Permits Remaining After the Special Hunt Drawing.

Permits remaining after the special hunt drawing may be sold by mail or on a first-come, first-served basis as provided in the addendum to the Bucks, Bulls and Once-In-A-Lifetime or Antlerless Addendum of the Wildlife Board for taking big game. These permits may be purchased by either residents or nonresidents.

R657-5-71. Obtaining Vouchers to Purchase Resident Southern Region General Deer Permits.

(1)(a) A person must obtain a resident Southern Region General Deer Voucher before purchasing a resident Southern Region general deer permit.

(b) Only persons who possess a valid resident Southern Region General Deer Voucher are eligible to purchase a resident Southern Region general deer permit. Vouchers are nontransferable

(2)(a) Resident Southern Region General Deer vouchers may be obtained at any Division satellite office on the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A list of Division satellite offices will be available at license agents and Division offices by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3) A person may obtain up to four Southern Region General Deer Vouchers by providing the following information for each person for whom the person obtains a voucher:

(a) name;
(b) address;
(c) date of birth; and
(d) proof of hunter education, if born after December 31, 1965.

(4) Valid resident Southern Region General Deer Vouchers may be redeemed for a resident Southern Region general deer permit beginning on the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(5) Duplicate resident Southern Region General Deer Vouchers will not be issued. If a voucher is lost, a person must purchase their resident Southern Region general deer permit from a Division regional office after computer verification from the Division that the person obtained a resident Southern Region General Deer Voucher.

KEY: wildlife, game laws, big game seasons*

January 15, 1999	**23-14-18**
Notice of Continuation June 23, 1997	**23-14-19**
	23-16-5
	23-16-6

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 person may not participate in the dedicated hunter program if that person has been convicted of any of the following violations of Title 23, Wildlife Resources Code, or any rule or proclamation of the Wildlife Board, or is currently on wildlife license revocation:

(a) a felony;

(b) a Class A misdemeanor in the last five years; or

(c) three or more Class B or Class C misdemeanors in the past five years.

(2)(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 first week prior to the posting of the bucks, bulls and once-in-a-lifetime drawing.

(3) Each certificate of registration is valid for a three-year period.

(4)(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.

(5) 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.

(6) Except as provided in Subsection R657-38-7(8), a participant entering the program may take two deer within three years.

(7) A participant may take only one deer in any one year, except as provided in Subsection R657-38-7(8).

(8)(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.

(9) 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.

(10) The participant and holder of the certificate of registration must have a valid permit in possession while hunting.

(11) Certificates of registration are not transferable and expire three years from the date of issuance.

(12) 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 by August 1 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.

(3) Dedicated hunters are subject to all rules and proclamations of the Wildlife Board.

KEY: wildlife, hunting, recreation, ethics
January 15, 1999 23-14-18

R657. Natural Resources, Wildlife Resources.
R657-42. Exchanges, Surrenders, Refunds and Reallocation of Licenses, Certificates of Registration and Permits.
R657-42-1. Purpose and Authority.

(1) Under the authority of Sections 23-19-1 and 23-19-38, the division may issue licenses, permits, tags and certificates of registration in accordance with the rules of the Wildlife Board.

(2) This rule provides the standards and procedures for the:

(a) exchange of permits;

(b) surrender of licenses, certificates of registration and permits;

(c) refund of licenses, certificates of registration and permits; and

(d) reallocation of permits.

R657-42-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and the applicable rules and proclamations of the Wildlife Board.

(2) In addition:

(a) "Alternate drawing lists" means a list of persons who have not already drawn a permit and would have been the next person in line to draw a permit.

R657-42-3. Permit Exchanges.

(1)(a) Any person who has obtained a general buck deer or a general bull elk permit may exchange that permit for any other available general permit if both permits are for the same species and sex.

(b) A person must make general buck deer and general bull elk permit exchanges at any division office prior to the season opening date of the permit to be exchanged.

(2) Any person who has obtained a cougar harvest objective unit permit may exchange that permit for any other available cougar harvest objective unit permit as provided in Rule R657-10.

(3) The division may charge a handling fee for the exchange of a permit.

R657-42-4. Surrender of Licenses, Certificates of Registration and Permits.

(1) Any person who has obtained a license, certificate of registration or permit and decides not to use it, may surrender the license, certificate of registration or permit to any division office.

(2) Any person who has obtained a license, certificate of registration or permit may surrender the license, certificate of registration or permit prior to the season opening date of the license, certificate of registration or permit for the purpose of:

(a) waiving the waiting period normally assessed and reinstating the number of bonus points, if applicable; or

(b) purchasing a reallocated permit or any other permit available for which the person is eligible.

(3) A Cooperative Wildlife Management Unit permit must be surrendered before the following dates:

(a) the opening date for the respective general archery season for buck deer, bull elk or spike bull elk;

(b) September 1 for pronghorn and moose;

(c) August 15 for antlerless deer and elk;

(d) prior to the applicable season date for small game and waterfowl; and

(e) prior to the applicable season date of any variance approved by the Wildlife Board in accordance with Rules R657-21 and R657-37.

(4) Dedicated hunter participants must surrender their permits prior to the general archery deer season.

(5) The division may not issue a refund, except as provided in Section R657-42-5.

R657-42-5. Refunds of Licenses, Certificates of Registration and Permits.

(1) The refund of a license, certificate of registration or permit shall be made in accordance with Section 23-19-38.

(2) All refunds must be processed through the Salt Lake Division office.

R657-42-6. Reallocation of Permits.

(1)(a) The division may reallocate surrendered limited entry, once-in-a-lifetime and Cooperative Wildlife Management Unit permits.

(b) The division shall not reallocate resident and nonresident big game general permits.

(2) Permits shall be reallocated through the Salt Lake Division office.

(3)(a) Any limited entry, once-in-a-lifetime or public Cooperative Wildlife Management Unit permit surrendered to the division shall be reallocated through the drawing process by contacting the next person listed on the alternate drawing list.

(b) The alternate drawing lists are classified as private and therefore, protected under the Government Records Access Management Act.

(c) The division shall make a reasonable effort to contact the next person on the alternate list by telephone or mail.

(d) If the next person, who would have drawn the limited entry, once-in-a-lifetime or public Cooperative Wildlife Management Unit permit, does not accept the permit or the division is unable to contact that person, the reallocation process will continue until the division has reallocated the permit or the season opens for that permit.

(4) If the next person, who would have drawn the limited entry, once-in-a-lifetime or public Cooperative Wildlife Management Unit permit has obtained a permit, that person may be required to surrender the previously obtained permit in accordance with Section R657-42-4(2) and any other applicable rules and proclamations of the Wildlife Board.

(5) Any private Cooperative Wildlife Management Unit permit surrendered to the division will be reallocated by the landowner through a voucher, issued to the landowner by the Division in accordance with Rule R657-37.

R657-42-7. Reallocated Permit Cost.

(1) Any person who accepts the offered reallocated permit must pay the applicable permit fee.

(2) The division may not issue a refund, except as provided in Section R657-42-5.

KEY: wildlife, permits

January 15, 1999

23-19-1
23-19-38

R657. Natural Resources, Wildlife Resources.
R657-43. Landowner Permits.
R657-43-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, this rule provides the standards and procedures for private landowners to obtain landowner permits for:

(a) taking buck deer within the general regional hunt boundary area where the landowner's property is located during the general deer hunt only; and

(b) taking bull elk, buck deer or buck pronghorn within a limited entry unit.

(2) In addition to this rule, any person who receives a landowner permit must abide by Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

(3) The intent of the general landowner deer permit is to provide an opportunity for landowners or their immediate family, whose property provides habitat for deer, to hunt deer during the general deer hunt within the general regional hunt boundary area where the landowner's property is located.

(4) The intent of the limited entry landowner permit is to provide an opportunity for landowners to be allocated a restricted number of permits for a specific unit. Allowing landowners a restricted number of permits:

(a) encourages landowners to manage their land for wildlife;

(b) compensates the landowner for providing private land as habitat for wildlife; and

(c) allows the Division to increase big game numbers on specific units.

R657-43-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Eligible property" means:

(i) private land that provides habitat for deer, elk or pronghorn as determined by the Division of Wildlife Resources;

(ii) land in agricultural use as provided in Section 59-2-502 and eligible for agricultural use valuation as provided in Sections 59-2-503 and 59-2-504; and

(iii) a minimum of 640 acres or more of private non-cropland owned by one landowner within the designated region for general deer permits; or

(iv) private land, including crop land owned by members of a landowner association for limited entry permits.

(b) "Landowner" means any individual, family, or corporation who owns property in Utah and whose name appears on a deed as the owner of eligible property or whose name appears as the purchaser on a contract for sale of eligible property.

(c) "Landowner association" means an organization of private landowners who own property within a limited entry unit, organized for the purpose of working with the Division.

(d) "Lessee" means any person, partnership, or corporation whose name appears as the Lessee on a written lease, for at least a one-year period, for eligible property used for farming or ranching purposes, and who is in actual physical control of the eligible property.

(e) "Limited entry unit" means a specified geographical area that is closed to hunting deer, elk or pronghorn to any person who has not obtained a valid permit to hunt in that unit.

(f) "Immediate family" means the landowner's spouse, children, father, mother, brother, sister, stepchildren, and grandchildren.

(g) "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 landowner big game hunting permit from a Division office.

R657-43-3. Qualifications for General Permits.

(1) The director, upon approval of the Wildlife Board, may establish a number of buck deer permits within the general regional hunt boundary area where the landowner's property is located to be offered to eligible landowners for the general deer hunting season only.

(2) Only private lands will be considered for general landowner permits. Public or state lands are not eligible.

(3) General landowner permits are limited to resident or nonresident landowners, corporations, lessees, and members of their immediate family that own land in Utah.

R657-43-4. Qualifications for Limited Entry Permits.

(1) The Director, upon approval of the Wildlife Board, may establish a number of bull elk, buck deer and buck pronghorn limited entry permits to be offered to an eligible landowner association.

(2) Limited entry landowner permits are available for taking buck deer, bull elk or buck pronghorn, and may only be used on designated limited entry units.

(3) Only private lands that do not qualify for Cooperative Wildlife Management Units will be considered for limited entry landowner permits. Public or state lands are not eligible.

(4) Only private lands that qualify as eligible property will be considered for limited entry landowner permits.

(5) Applications for limited entry landowner permits will be received from landowner associations only.

(6) Only one landowner association may be formed for each limited entry unit as follows:

(a) A landowner association may be formed only if a simple majority of landowners, representing 51 percent of the eligible private lands within the herd unit, enter into a written agreement to form the association.

(b) The association may not unreasonably restrict membership to other qualified landowners in the unit.

(c) Each landowner association must elect a chairperson to represent the landowner association.

(d) The landowner association chairperson shall act as liaison with the Division and the Wildlife Board.

(e) A landowner or landowner association may not restrict legal established passage through private land to access public lands for the purpose of hunting.

R657-43-5. Application for General Permits.

(1) Applications for general landowner permits are available from Division offices.

(2) Only one representative landowner may submit an application for lands within the respective general regional hunt

boundary area that qualify for general landowner permits.

(3) In cases where more than one application is received for the same parcel of land, all applications will be rejected.

(4) Applications must include:

(a) total acres owned within the respective general regional hunt boundary area;

(b) signature of the landowner; and

(c) location of the private lands, acres owned, county and region.

(5) A $5 non-refundable handling fee must accompany each application.

(6) Applications will be available by January 7.

(7) Applications must be completed and returned to the regional Division office by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board.

(8) Signature on the application will serve as an affidavit certifying ownership.

R657-43-6. Application for Limited Entry Permits.

(1) Applications for limited entry landowner permits are available from Division offices and from Division wildlife biologists.

(2) Applications to receive limited entry landowner permits must be submitted by a landowner association for lands within the limited entry hunt unit where the private lands are located.

(3) Applications must include:

(a) total acres owned by the association within the limited entry hunting unit and a map indicating the privately owned big game habitat;

(b) signature of each of the landowners within the association including acres owned;

(c) signature on the application will serve as an affidavit certifying ownership;

(d) a distribution plan for the allocation of limited entry permits by the association;

(e) a copy of the association by-laws; and

(f) a $5 non-refundable handling fee.

(4) The Division shall, upon request of the applicant, provide assistance in preparing the application.

(5) Applications must be completed and returned to the Division wildlife biologist in the appropriate region by September 1 annually.

(6) The Division shall forward the application and other documentation to the Regional Wildlife Advisory Councils for public review.

(7) Recommendations by the Councils will then be forwarded to the Wildlife Board for review and action.

(8) Upon approval by the Wildlife Board, a Certificate of Registration will be issued to the landowner association.

R657-43-7. General Permits and Season Dates.

(1) The following number of general permits may be available to a landowner:

(a) one general permit may be issued for eligible property of 640 acres; and

(b) one additional general permit may be issued for eligible property for each additional 640 acres.

(2) General permits issued to landowners shall be included in the total hunt area allocation.

(3) Permittees may select only one general permit (archery, rifle or muzzleloader) as provided in the proclamation of the Wildlife Board for taking big game.

(4) General landowner permits are for landowner use only and may not be transferred.

(5) Any person who is issued a general landowner permit must follow season dates, weapon restrictions and any other regulations as provided in the proclamation of the Wildlife Board for taking big game.

(6) A general landowner permit holder may take only one buck deer within the respective general regional hunt boundary area during any one year.

(7) A general landowner permit authorizes the permittee to hunt within the respective general regional hunt boundary area, where the eligible property is located.

(8) The fee for a general landowner permit is the same as the fee for a general season, general archery or general muzzleloader buck deer permit.

R657-43-8. Limited Entry Permits and Season Dates.

(1) Only bull elk, buck deer or buck pronghorn limited entry permits may be applied for by the landowner association.

(2)(a) The Division regional biologist and landowner chairperson shall jointly recommend the number of permits to be issued to the landowner association.

(b) When consensus between the landowner chairperson and the regional biologist is not reached, applications shall include justification for permit numbers for review by the Wildlife Regional Advisory Councils and the Wildlife Board.

(3) Permit numbers shall fall within the herd unit management guidelines. Permit numbers will be based on:

(a) the percent of private land big game habitat within the unit that is used by wildlife; or

(b) the percentage of use by wildlife on the private lands.

(4) Landowners receiving vouchers may personally use the vouchers or reassign the vouchers to any legal hunter.

(5) All landowners who receive vouchers, and transfer the vouchers to other hunters must:

(a) allow those hunters receiving the vouchers access to their private lands for hunting; and

(b) allow the same number of public hunters with valid permits, equal to the number of vouchers transferred, to access the landowner association's private land for hunting during the appropriate limited entry bull elk, buck deer or buck pronghorn hunting season, except as provided in Subsection (6).

(6)(a) Landowners who transfer vouchers to other hunters may deny public hunters access to the landowner association's private land for hunting by requesting, through the landowner association, a variance to Subsection (5)(b) from the Wildlife Board.

(b) The requested variance must be provided by the landowner association in writing to the division 30 days prior to the appropriate Regional Advisory Council meeting scheduled to review Rule R657-5 and the Bucks, Bulls and Once-in-a-lifetime proclamation of the Wildlife Board for taking big game.

(c) The written and oral variance request must be presented by the landowner association to the appropriate local

Regional Wildlife Advisory Council. The local Regional Wildlife Advisory Council shall forward a recommendation to the Wildlife Board for consideration and action.

(7) Any person who is issued a limited entry landowner permit must follow the season dates, weapon restrictions and any other regulations governing the taking of big game as specified in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

(8) A limited entry landowner permit authorizes the permittee to hunt within the limited entry unit where the eligible property is located.

(9) Nothing in this rule shall be construed to allow any person, including a landowner, to take more than one buck deer, one bull elk or one buck pronghorn during any one year.

R657-43-9. Limited Entry Permit Allocation and Fees.

(1) Upon approval of the Wildlife Board, the Division shall issue vouchers to landowner associations that may be used to purchase limited entry permits from Division offices.

(2) The fee for any limited entry landowner permit is the same as the cost of similar limited entry buck deer, bull elk or buck pronghorn limited entry permits.

R657-43-10. Limited Entry Permit Conflict Resolution.

(1)(a) If landowners representing a simple majority of the private land within a landowner association are not able to resolve any dispute or conflict arising from the distribution of permits or other disagreement within its discretion and arising from the operation of the landowner association, the permits allocated to the landowner association shall be made available to the general public by the Division.

(b) Landowner associations may be eligible to receive landowner permits in subsequent years if the landowner association resolves the conflict or dispute by a simple majority of the landowners.

(2) The Division shall not issue landowner permits to a landowner association that has not complied with the provisions of this rule.

KEY: wildlife, landowner permits*, big game seasons*
January 15, 1999 **23-14-18**
23-14-19

R710. Public Safety, Fire Marshal.
R710-1. Concerns Servicing Portable Fire Extinguishers.
R710-1-1. Adoption, Title, Purpose, and Prohibitions.

Pursuant to Section 53-7-204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum rules to provide regulation to those concerns that service Portable Fire Extinguishers.

There is adopted as part of these rules the following code which is incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 10, Standard for Portable Fire Extinguishers, 1998 edition, except as amended by provisions listed in R710-1-8, et seq.

1.2 A copy of the above mentioned standard is on file in the Office of Administrative Rules and the State Fire Marshal's Office.

1.3 Validity.

If any section, subsection, sentence, clause, or phrase, of these rules is, for any reason, held to be unconstitutional, contrary to statute, or exceeding the authority of the SFM, such decision shall not affect the validity of the remaining portion of these rules.

1.4 Order of Precedence.

In the event of any difference between these rules and any adopted reference material, the text of these rules shall govern. When a specific provision varies from a general provision, the specific provision shall apply.

R710-1-2. Definitions.

"Annual" means a period of one year or 365 calendar 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, and may include, but shall not be limited to, those persons who work on a contractual basis.

"License" means a written document issued by the SFM authorizing a concern to engage in the business of servicing portable fire extinguishers.

"NFPA" means National Fire Protection Association.

"Repair" means any work performed on, or to, any portable fire extinguisher, and not defined as charging, recharging, or hydrostatic testing.

"SFM" means State Fire Marshal.

"UCA" means Utah State Code Annotated 1953 as amended.

R710-1-3. Licensing.

3.0 License Required.

No person or concern shall engage in the servicing of portable fire extinguishers without a license issued by the SFM, pursuant to these rules, expressly authorizing such concern to perform such acts.

3.1 Application.

(a) Application for a license to engage in the business of, or perform the servicing of portable fire extinguishers, shall be made in writing to the SFM on forms provided by the SFM. A separate application for license shall be made for each separate place or business location of the applicant (branch office).

(b) As of January 1, 1999, the application for a license to engage in the business of, or perform the servicing of portable fire extinguishers, shall be accompanied with proof of public liability insurance. The public liability insurance shall be issued by a public liability insurance carrier showing coverage of at least $100,000 for each incident, and $300,000 in total coverage. The licensee shall notify the SFM within thirty days after the public liability insurance coverage required is no longer in effect for any reason.

3.2 Signature of Application.

The application shall be signed by the applicant. If the application is made by a partnership, it shall be signed by all partners. If the application is made by a corporation or association other than a partnership, it shall be signed by a principal officer.

3.3 Equipment Inspection.

The applicant shall allow the SFM, and any of his properly authorized deputies to enter, examine, and inspect any premise, building, room, establishment, or vehicle, used by the applicant in servicing portable fire extinguishers to determine compliance with the provisions of these rules. The inspection will be conducted during normal business hours, and the owner or manager will be given a minimum of 24 hours notice before the appointed inspection. The equipment inspection may be conducted on an annual basis, and consent to inspect will be obtained.

3.4 Issuance.

Following receipt of the properly completed application, and compliance with the provision of the statute and these rules, the SFM shall issue a license.

3.5 Original, Valid Date.

Original licenses shall be valid from the date of issuance through December 31st of the year in which issued. Thereafter, each license shall be renewed annually and renewals thereof shall be valid from January 1st through December 31st. Original licenses purchased after July 1st and up to November 1st can be purchased one time, at a one-half year fee. Licenses issued on or after November 1st will be valid through December 31st of the following year.

3.6 Renewal, Valid Date.

Application for renewal shall be made before January 1st of each year. Application for renewal shall be made in writing, on forms provided by the SFM.

3.7 Refusal to Renew.

The SFM may refuse to renew any license in the same manner, and for any reason, that he is authorized, pursuant to Section 10 of these rules to deny a license. The applicant shall, upon such refusal, have the same rights as are granted by Section 10 of these rules to an applicant for an original license which has been denied by the SFM.

3.8 Change of Address.

Every licensee shall notify the SFM, in writing, within

thirty (30) days, of any change of his address or location.

3.9 Under Another Name.

No licensee shall conduct his licensed business under a name other than the name or names which appears on his license.

3.10 List of Licensed Concerns.

The SFM shall make available, upon request and without cost, to the chief fire official of each local fire authority, the name, address, and license number of each concern that is licensed pursuant to these rules. Upon request, single copies of such list shall be furnished, without cost, to a licensed concern.

3.11 Inspection.

The holder of any license shall submit such license for inspection upon request of the SFM, or any of his properly authorized deputies, or any local fire official.

3.12 SFM Notification and Certification of Registration.

Every licensed concern shall, within thirty (30) days of employment, and within thirty (30) days of termination of any employee, report to the SFM, the name, address, and certificate of registration number, of every person performing any act of servicing portable fire extinguishers for such licensed concern in writing.

3.13 Type.

(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 by any of the employees. Every licensed concern shall be staffed by qualified personnel, and shall be properly equipped to perform the act or acts for the type of license issued.

(b) Licenses shall authorize any one, or any combination of the following types of activities:

(1) Type 1 - Conducting of all activities, as per (2), (3), and (4) below, or

(2) Type 2 - Conducting hydrostatic tests of fire extinguisher cylinders that are listed and marked in conformance with the United States Department of Transportation (I.C.C.) rules, or

(3) Type 3 - Conducting hydrostatic tests of dry chemical, halon, water, and water chemical type fire extinguishers, or

(4) Type 4 - Servicing and maintaining all types of extinguishers, excluding hydrostatic testing.

(c) No licensed concern shall be prohibited from taking orders for the performance of any act or acts for which the concern has not been licensed to perform. Such orders shall be consigned to another licensed concern that is authorized to perform such act or acts.

3.14 Examination.

Every person who performs any act or acts within the scope of the license shall pass an examination in accordance with the provisions of section 4 of these rules.

3.15 Duplicate License.

A duplicate license may be issued by the SFM to replace any previously issued license, which has been lost or destroyed, upon the submission of a written statement from the licensee to the SFM. Such statement shall attest to the fact that the license has been lost or destroyed.

3.16 Employer Responsibility.

Every concern shall be responsible for the acts of its employees insofar as such acts apply to the marketing, sale, distribution, and servicing of any portable fire extinguisher.

3.17 Minimum Age.

No license shall be issued to any person as licensee who is under eighteen (18) years of age.

3.18 Restrictive Use.

(a) No license shall constitute authorization for any licensee, or any of his employees, to enter upon, or into, any property or building other than by consent of the owner or manager.

(b) No license shall constitute authorization for any licensee, or any of his employees, to enforce any provision, or provisions, of this rule, or the Uniform Fire Code.

3.19 Non-Transferable.

No license issued pursuant to this section shall be transferred from one concern to another.

3.20 Registration Number.

(a) Every license shall be identified by a number, delineated as E-(number). Such number may be transferred from one concern to another only when approved by the SFM.

3.21 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) Type 4 license:

(1) Nitrogen tank.

(2) Nitrogen regulator and hose assembly.

(3) Minimum of twelve (12) recharge adapters.

(4) Valve cleaning brush.

(5) Scoop.

(6) Funnel for A:B:C.

(7) Funnel for B:C.

(8) A closed receptacle for dry chemical.

(9) Fifty pound scale.

(10) A scale for cartridges.

(11) 'O' Ring lubricant.

(12) Tag hole Punch.

(13) Approved seals maximum fourteen (14) pound break strength.

(14) A copy of NFPA Standard 10 (1998 Edition), statute, and these rules.

(15) Minimum parts:

(A) A supply of O rings needed for standard service.

(B) A supply of valve stems for standard service.

(C) A supply of nozzles for standard extinguishers.

(D) Pressure gauges for extinguisher types: 100, 150, 175, 195, 240 lbs.

(E) Carry handles and replacement handles for extinguishers.

(F) Rivets or steel roll pins for handles and levers.

(G) Dry chemical cartridges as required by manufacture specifications, to include 4 lb., 10 lb., 20 lb. and 30 lb.

(H) Inspection light for cylinders.

(I) A variety of pull pins to secure handle.

(J) Carbon Dioxide continuity tester for hoses.

(K) Halon closed recovery system.

(b) Type 3 License:

(1) Approved testing pump.

(2) Test cage or suitable safety barrier.

(3) Approved hydro test labels.

(4) Hydrostatic test adapters or approved equal.

(5) Heater which produces a heated air or dry air for drying cylinders, or other approved dryer not to exceed 150 degrees Far. (66 degrees C).

(c) Type 2 License:

Current registration number from the Department of Transportation, verifying the concern as a qualified cylinder requalification facility under the provision of Section 173.34 of Title 49, Code of Federal Regulations, 49 CFR shall be maintained for all concerns holding a type 1 or 2 license. A copy of the certification letter must be submitted to the SFM.

(d) Type 1 License:

All of the equipment, provisions, and numbers as required in License types 2, 3, and 4 shall be required for a Type 1 License.

3.22 Records.

Accurate records shall be maintained for five years back by the licensee of all service work performed. These records shall include the name and address of all servicing locations, and the date and name of the person performing the work. These records shall be made available to the SFM, or authorized deputies, upon request.

R710-1-4. Certificates of Registration.

4.0 Required Certificates of Registration.

No person shall service any portable fire extinguisher without a certificate of registration issued by the SFM pursuant to these rules expressly authorizing such person to perform such acts. The provisions of this section apply to the state, universities, a county, city, district, public authority, and any other political subdivision or public corporation in this State.

4.1 Exemptions.

The provisions of this section shall not apply to any person servicing any portable fire extinguisher owned by such person, when the portable fire extinguisher is not required by any statute, rule, or ordinance, to be provided or installed.

4.2 Application.

Application for a certificate of registration to service portable fire extinguishers shall be made in writing to the SFM on forms provided by him. The application shall be signed by the applicant.

4.3 Examination.

The SFM shall require all applicants for a certificate of registration to take and pass a written examination, which may be supplemented by practical tests, when deemed necessary, to determine the applicant's knowledge of servicing portable fire extinguishers. 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 shall 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.

4.4 Issuance.

Following receipt of the properly completed application, compliance with the provisions of these rules, and the successful completion of the required examination, the SFM shall issue a certificate of registration.

4.5 Original and Renewal Valid Date.

Original certificates of registration shall be valid from the date of issuance through December 31st of the year in which issued. Thereafter, each certificate of registration shall be renewed annually and renewals thereof shall be valid from January 1st through December 31st. Original certificates purchased after July 1st and up to November 1st can be purchased one time, at a one-half year fee. Certificates of registration issued on or after November 1st will be valid through December 31st of the following year.

4.6 Renewal Date.

Application for renewal shall be made by January 1st of each year. Application for renewal shall be made in writing on forms provided by the SFM.

4.7 Re-examination.

Every holder of a valid certificate of registration shall take a re-examination every five years, from date of original certificate, to comply with the provisions of Section 4.3 of these rules.

4.8 Refusal to Renew.

The SFM may refuse to renew any certificate of registration in the same manner and for any reason that he is authorized, pursuant to Section 10, to deny an original certificate of registration. The applicant shall, upon such refusal, have the same rights as are granted by Section 10 of these rules to an applicant for an original certificate of registration which has been denied by the SFM.

4.9 Inspection.

The holder of a certificate of registration shall submit such certificate for inspection, upon request of the SFM, any of his properly authorized deputies, or any local fire official.

4.10 Type.

(a) Every certificate of registration shall indicate the type of act or acts to be performed and for which the applicant has qualified.

(b) No person holding a valid certificate of registration shall be authorized to perform any act unless he is a licensee or is employed by a licensed concern.

4.11 Change of Address.

Any change in home address of any holder of a valid certificate of registration shall be reported in writing, by the registered person to the SFM within thirty (30) days of such change. Such change shall also be made on the reverse side of the certificate of registration by the holder.

4.12 Duplicate.

A duplicate certificate of registration may be issued by the SFM to replace any previously issued certificate which has been lost or destroyed upon the submission of a written statement to the SFM from the certified person. Such statement shall attest to the certificate having been lost or destroyed.

4.13 Minimum Age.

No certificate of registration shall be issued to any person who is under eighteen (18) years of age.

4.14 Restrictive Use.

(a) A certificate of registration may be used for identification purposes only as long as such certificate remains valid and while the holder is employed by a licensed concern.

(b) Regardless of the acts authorized to be performed by a licensed concern, only those acts for which the applicant for a certificate of registration has qualified shall be permissible by such applicant.

4.15 Contents of Examination.

(a) The examination required under the provisions of Section 3.14, shall include a written test of the applicant's knowledge of the provisions of these rules, and may include an actual demonstration of his ability to perform the acts indicated on the application.

(b) Examinations shall, in the opinion of the SFM, be compatible with the type of work to be performed by the applicant and with the equipment with which he will function.

(c) The written portion of the examination shall be divided into the following groups:

(1) Provisions relating to these Rules Governing Concerns Servicing Portable Fire Extinguishers.

(2) Hydrostatic testing of any D.O.T. (I.C.C.) listed fire extinguisher cylinders.

(3) Hydrostatic testing of dry chemical, halon, water, and water chemical type fire extinguishers.

(4) Service and maintain all types of extinguishers, excluding hydrostatic testing.

4.16 Right to Contest.

(a) 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.

(b) Every contention as to the validity of individual questions of an examination shall be made in writing within 48 hours after taking said examination. Contentions shall state the reason for the objection.

(c) The decision as to the action to be taken on the submitted contention shall be by the SFM, and such decision shall be final.

(d) The decision made by the SFM, and the action taken, shall be reflected in all future examinations, but shall not affect the grades established in any past examination.

4.17 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. Each portion of the examination shall be separately graded.

4.18 Non-Transferable.

Certificates of Registration shall not be transferable. Individual certificates of registration shall be carried by the person to whom issued.

4.19 New Employees.

New employees of a licensed concern may perform the various acts while under the direct supervision of persons holding a valid certificate of registration for a period not to exceed forty-five (45) days from the initial date of employment. By the end of such period, new employees shall have taken and passed the required examination.

4.20 Certificate Identification.

Every certificate shall be identified by a number, delineated as EE-(number). Such number shall not be transferred from one person to another.

R710-1-5. Seal of Registration.

5.0 Description.

The official seal of registration of the SFM shall consist of the following:

(a) The image of the State of Utah shall be in the center with an outer ring stating, "Utah State Fire Marshal".

(1) The top portion of the outer ring shall have the wording "Utah State".

(2) The Bottom portion of the outer ring shall have the wording "Fire Marshal".

(b) Appending above the top portion and in a centered position, shall be a box provided for displaying the type of license.

(c) Appending below the bottom portion and in a centered position, shall be a box provided for the displaying of the license number assigned to the concern.

5.1 Use of Seal.

No person or concern shall produce, reproduce, or use this seal in any manner or for any purpose except as herein provided.

5.2 Permissive Use.

Licensed concerns shall use the Seal of Registration on every service tag conforming to section 10.

5.3 Cease Use Order.

No person or concern shall continue the use of the Seal of Registration in any manner or for any purpose after receipt of a notice in writing from the SFM to that effect, or upon the suspension or revocation of the concern's license.

5.4 Legibility.

Every reproduction of the Seal of Registration and every letter and number placed thereon, shall be of sufficient size to render such seal, letter, and number distinct and clearly legible.

R710-1-6. Service Tags.

6.1 Size and Color.

Tags shall be not more than five and one-half inches (5-1/2") in height, nor less than four and one-half inches (4-1/2") in height, and not more than three inches (3") in width, nor less than two and one-half inches (2-1/2") in width.

6.2 Attaching Tag.

One service tag shall be attached to each portable fire extinguisher in such a position as to be conveniently inspected.

6.3 Tag Information.

(a) Service tags shall bear the following information:

(1) Provisions of Section 6.7.

(2) Type of license.

(3) Approved Seal of Registration of the SFM.

(4) License registration "E" number.

(5) Certificate of registration "EE" number of individual who performed or supervised the service or services performed.

(6) Signature of individual whose certificate of registration number appears on the tag.

(7) Concern's name.

(8) Concern's address.

(9) Type of service performed.

(10) Type of extinguisher serviced.

(11) Date service is performed.

(b) The above information shall appear on one side of the service tag. All other desired printing or information shall be placed on the reverse side of the tag.

6.4 Legibility.

(a) The certificate of registration number required in Section 6.3(5), and the signature required in Section 6.3(6), shall be printed or written distinctly.

(b) All information pertaining to date, type of servicing, and type of extinguisher serviced shall be indicated on the card by perforations in the appropriate space provided. Each perforation shall clearly indicate the desired information.

6.5 Format.

Subject to the use requirements of Section 6.4, the following format shall be used for all service tags:

EXAMPLE OF SERVICE TAG

Exception: Service tags may be printed or otherwise established for any number of years not in excess of five (5) years. ILLUSTRATION ON FILE IN STATE FIRE MARSHAL'S OFFICE

6.6 New Tag.

A new service tag shall be attached to the extinguisher each time a service is performed.

6.7 Tag Wording.

The following wording shall be placed at the top or reinforced ring end of every tag: "DO NOT REMOVE, BY ORDER OF THE STATE FIRE MARSHAL".

6.8 Removal.

No person or persons shall remove a service tag, hydrostatic test tag or label, 6 year maintenance service tag or label, or verification of service collar, except when further service is performed. No person or persons shall deface, modify, or alter any service tag, hydrostatic test tag or label, 6 year maintenance service tag or label, or verification of service collar that is required to be attached to any portable fire extinguisher.

6.9 Restrictive Use.

(a) Portable fire extinguishers which do not conform with the minimum rules, shall be permanently removed from service, and shall not be tagged.

(b) Any extinguisher which fails a hydrostatic test shall be condemned, and so stamped or etched into the cylinder or shell.

(c) Extinguishers, other than one which has failed a hydrostatic test, may be provided with a tag stating the extinguisher is "Condemned" or "Rejected". Such tags shall be red in color, and shall be not less, in size, than that of an approved service tag.

(d) Service tags shall only be placed on portable fire extinguishers and wheeled units as allowed in these rules.

R710-1-7. Portable Fire Extinguisher Rated Classification Labels.

7.1 Use of Label.

Any label bearing the rated classification and listing shall not be placed upon any extinguisher unless specifically authorized by the manufacturer. Any extinguisher, other than carbon dioxide, without this manufacturer's label shall not be serviced.

7.2 Labels Prohibited.

Company labels or advertisement stickers other than those required herein shall not be affixed to fire extinguishers.

R710-1-8. Amendments and Additions.

8.1 Restricted Service.

Any extinguisher requiring a hydrostatic test as required, shall not be serviced until such extinguisher has been subjected to, and passed the required hydrostatic test.

8.2 Service.

At the time of installation, and at each annual inspection, all servicing shall be done in accordance with the manufacturer's instructions, adopted statutes, and these rules. Extinguishers shall be placed in an operable condition, free from defects which may cause malfunctions. Nozzles and hoses shall be free of obstructions or substances which may cause an obstruction.

8.3 Seals or Tamper Indicator.

Seals or tamper indicators shall be constructed of approved plastic or non-ferrous wire which can be easily broken, and so arranged that removal cannot be accomplished without breakage. Such seals or tamper indicators shall be used to retain the locking pin in a locked position. Seals or tamper indicators shall be removed annually to ensure that the pull pin is free.

8.4 New Extinguishers

A new extinguisher that has the date of manufacture printed on the label by the manufacturer, or date of manufacture stamped on the extinguisher by the manufacturer, does not require a service tag attached to the extinguisher until one year after the date of manufacture.

8.5 Class K Portable Fire Extinguishers

NFPA, Standard 10, Section 2-3.2 and Section 2-3.2.1, 1998 edition, is deleted and replaced with the following:

a. Class K labeled portable fire extinguishers shall be provided for the protection of commercial food heat-processing equipment using vegetable or animal oils and fat cooking media. A placard shall be provided and placed above the Class K portable fire extinguisher that states that if a fire protection system exists, it shall be activated prior to use of the Class K portable fire extinguisher.

b. Those existing sodium or potassium bicarbonate dry-chemical portable fire extinguishers, having a minimum rating of 40-B, and specifically placed for protection of commercial food heat-processing equipment, shall be allowed to remain in use until July 1, 1999, and then shall be replaced with a Class K rated portable fire extinguisher.

R710-1-9. Adjudicative Proceedings.

9.1 All adjudicative proceedings performed by the agency shall proceed informally as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

9.2 The issuance, renewal, or continued validity of a license or certificate of registration may be denied, suspended, or revoked, if the SFM finds that the applicant, person employed for, or the person having authority and management of a concern servicing portable fire extinguishers commits any of the following violations:

(a) The person or applicant is not the real person in interest.

(b) Material misrepresentation or false statement in the application.

(c) Refusal to allow inspection by the SFM, or 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 is made, as evidenced by failure to pass the examination and practical tests pursuant to Section 4.19 of these rules.

(f) The person or applicant fails to place a verification of service collar on the valve assembly of any pressurized dry chemical extinguisher when the following occurs:

(i) re-charge;

(ii) 6 year maintenance; or

(iii) hydrostatic testing.

(g) The person or applicant refuses to take the examination required by Section 4.3 and Section 3.14 of these rules.

(h) 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.

(i) The person servicing portable fire extinguishers does not maintain adequate facilities, equipment, or knowledge, to conduct operations as required in the manufacturer's instructions, statute, and rules.

(j) 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.

9.3 A person whose license or certificate of registration is suspended or revoked by the SFM shall have an opportunity for a hearing before the Board if requested by that person within 20 days after receiving notice.

9.4 All adjudicative proceedings, other than criminal prosecution, taken by the SFM to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

9.5 The Board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The Board shall be the final authority on the suspension or revocation of a license or certificate of registration.

9.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

9.7 Reconsideration of the Board decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

9.8 After a period of three years from the date of revocation, the Board shall review the submitted written application of a person whose license or certificate of registration has been revoked. After timely notice to all parties involved, the Board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the Board. After the hearing, the Board shall direct the SFM to allow the person to complete the licensing or certification process or shall direct that the revocation be continued.

9.9 Judicial review of all final Board actions resulting from informal adjudicative proceedings shall be conducted pursuant to UCA, Section 63-46b-15.

R710-1-10. Fees.

10.1 Fee Schedule.

(a) Licenses and Certificates of Registration (new and renewals):

TABLE

(1)	License (any type)	$200.00
(2)	Branch office license	100.00
(3)	Certificate of registration	30.00
(4)	Duplicate	30.00
(5)	License Transfer	50.00
(6)	Application for exemption	100.00

(b) Examinations:

TABLE

(1)	Initial examination	20.00
(2)	Re-examination	15.00
(3)	Five year examination	20.00

10.2 Payment of Fees.

The required fee shall accompany the application for license or certificate of registration. License or certificate of registration fees will be refunded if the application is denied.

10.3 Late Renewal Fees.

(a) Any license or certificate of registration not renewed before January 1st will be subject to an additional fee equal to 10% of the required inspection fee.

(b) When a certificate of registration has expired for more than one year, an application shall be made for an original certificate as if the application was being made for the first time. Examinations will be re-taken with initial examination fees.

KEY: fire prevention, extinguishers
January 15, 1999 **53-7-204**
Notice of Continuation June 19, 1997

R710. Public Safety, Fire Marshal.
R710-3. Assisted Living Facilities.
R710-3-1. Introduction.

Pursuant to Title 53, Chapter 7, Section 204, of the Utah Code Annotated 1953, the Utah Fire Prevention Board adopts for the purpose of establishing minimum standards for prevention of fire and for the protection of life and property against fire and panic in assisted living facilities.

There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 Uniform Fire Code (UFC), Volume 1, 1997 edition, as published by the International Fire Code Institute (IFCI), except as amended by provisions listed in R710-3-3, et seq.

1.2 Uniform Building Code (UBC), Volume 1, 1997 edition, as published by the International Conference of Building Officials (ICBO), and as adopted by the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953.

1.2.1 Uniform Building Code (UBC), Volume 1, Appendix Chapter 3, Division IV - Requirements for Group R, Division 4 Occupancies, 1997 edition, as referenced in Statewide Amendment, Uniform Building Code, effective March 5, 1992.

1.3 Copies of the above code are on file in the Office of Administrative Rules and the State Fire Marshal.

R710-3-2. Definitions.

"Ambulatory" means a person who is capable of achieving mobility sufficient to exit without the assistance of another person.

"Assisted Living Facility" means:

(1) a Type I Assisted Living Facility, which is a residential facility that provides a protected living arrangement for ambulatory, nonrestrained persons who are capable of achieving mobility sufficient to exit the facility without the assistance of another person.

(2) a Type II Assisted Living Facility, which is a residential facility that provides an array of coordinated supportive personal and health care services to residents who meet the definition of semi-independent.

(3) Assisted Living Facilities shall be classified as follows:

(a) "Type I and II Limited Capacity Assisted Living Facility" means a facility accommodating not more than five residents, excluding staff.

(b) "Type I and II Small Assisted Living Facility" means a facility accommodating more than five and not more than sixteen residents, excluding staff.

(c) "Type I and II Large Assisted Living Facility" means a facility accommodating more than sixteen residents.

"Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his duly authorized deputies, or the local fire enforcement authority.

"Board" means Utah Fire Prevention Board.

"ICBO" means International Conference of Building Officials.

"IFCI" means International Fire Code Institute.

"Licensing Authority" means the Utah Department of Health or the Utah Department of Human Services.

"Semi-independent" means a person who is:

A. physically disabled but able to direct his or her own care; or

B. cognitively impaired or physically disabled but able to evacuate from the facility with the physical assistance of one person.

"SFM" means State Fire Marshal.

"UBC" means Uniform Building Code.

"UFC" means Uniform Fire Code.

R710-3-3. Amendments and Additions.

3.1 General Requirements

3.1.1 All facilities shall be inspected annually and obtain a certificate of fire clearance signed by the AHJ.

3.1.2 All facility administrators shall develop emergency plans, provide staff training in the usage of all emergency equipment to include portable fire extinguishers, hood systems, fire alarms, and fire drills, in addition to those requirements in the UFC, Article 13.

3.2 Type I Assisted Living Facilities

3.2.1 Type I Limited Capacity Assisted Living Facilities shall be constructed in accordance with UBC, Group R, Division 3 Occupancies; and maintained in accordance with the UBC and UFC.

3.2.2 Type I Limited Capacity Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

3.2.3 Residents in Type I Limited Capacity Assisted Living Facilities shall be housed on the first story only, unless an approved outside exit leading to the ground level is provided from any upper or lower level. Split entry/split level type homes in which stairs to the lower and upper level are equal or nearly equal, may have residents housed on both levels when approved by the AHJ.

3.2.4 In Type I Limited Capacity Assisted Living Facilities, resident rooms on the ground level, shall have escape or rescue windows as required in UBC, Chapter 3, Section 310.4.

3.2.5 In Type I Limited Capacity Assisted Living Facilities an approved independent smoke detector shall be installed in each sleeping room and access hallway.

3.2.6 Type I Small Assisted Living Facilities shall be constructed in accordance with UBC, Appendix Chapter 3, Division IV - Requirements for Group R, Division 4 Occupancies; and maintained in accordance with the UBC and UFC.

3.2.7 Type I Small Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

3.2.8 Type I Large Assisted Living Facilities shall be constructed in accordance with UBC, Group I, Division 2; and maintained in accordance with the UBC and UFC.

3.3 Type II Assisted Living Facilities

3.3.1 Type II Limited Capacity Assisted Living Facilities shall be constructed in accordance with UBC, Appendix Chapter 3, Division IV, Requirements for Group R, Division 4

Occupancies; and maintained in accordance with the UBC and UFC.

3.3.2 Type II Limited Capacity Assisted Living Facilities shall have an approved automatic fire extinguishing system installed in compliance with the UBC, or provide a staff to a resident ratio of one to one on a 24 hour basis.

3.3.3 Type II Small Assisted Living Facilities shall be constructed in accordance with UBC, Group I, Division 2; and maintained in accordance with the UBC and UFC.

3.3.4 Type II Small Assisted Living Facilities shall have a minimum corridor width of six feet.

3.3.5 Type II Large Assisted Living Facilities shall be constructed in accordance with UBC, Group I, Division 2; and maintained in accordance with the UBC and UFC.

3.3.6 Type II Large Assisted Living Facilities shall have a minimum corridor width of six feet.

R710-3-4. 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.

R710-3-5. Validity.

The Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or the codes adopted, be declared invalid, it is the intent of the Board that it would have passed all other portions of this action, independent of the elimination of any portions as may be declared invalid.

R710-3-6. Conflicts.

In the event where separate requirements pertain to the same situation in the adopted codes, the more restrictive requirement shall govern, as determined by the AHJ.

R710-3-7. Adjudicative Proceedings.

7.1 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.

7.2 A person may request a hearing on a decision made by the AHJ by filing an appeal to the Board within 20 days after receiving final decision from the AHJ.

7.3 All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

7.4 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

7.5 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

7.6 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

7.7 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

KEY: assisted living facilities
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Notice of Continuation June 19, 1997

R710. Public Safety, Fire Marshal.

R710-4. Buildings Under the Jurisdiction of the State Fire Prevention Board.

R710-4-1. Adoption of Fire Codes.

Pursuant to Title 53, Chapter 7, Section 204, of the Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum rules for the prevention of fire and for the protection of life and property against fire and panic in any publicly owned building, including all public and private schools, colleges, and university buildings, and in any building or structure used, or intended for use, as an asylum, hospital, mental hospital, sanitarium, home for the aged, residential health care facility, children's home or institution, or any similar institutional type occupancy of any capacity; and in any place of assemblage where fifty (50) or more persons may gather together in a building, structure, tent, or room, for the purpose of amusement, entertainment, instruction, or education.

There is further adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 101, Life Safety Code (LSC), 1997 edition, except as amended by provisions listed in R710-4-3, et seq. The following chapters from NFPA, Standard 101 are the only chapters adopted: Chapter 12 - New Health Care Occupancies; Chapter 13 - Existing Health Care Occupancies; Chapter 14 - New Detention and Correctional Occupancies; Chapter 15 - Existing Detention and Correctional Occupancies; and other sections referenced within and pertaining to these chapters only.

1.2 National Fire Protection Association (NFPA), Standard 13, Installation of Sprinkler Systems, 1996 edition, except as amended by provisions listed in R710-4-3, et seq.

1.3 National Fire Protection Association (NFPA), Standard 72, National Fire Alarm Code, 1996 edition, except as amended by provisions listed in R710-4-3, et seq.

1.4 National Fire Protection Association (NFPA), Standard 70, National Electric Code (NEC), 1996 edition, as adopted by the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953.

1.5 Uniform Building Code (UBC), Volume 1, 1997 edition, as published by the International Conference of Building Officials (ICBO), and as adopted by the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953.

The following UBC appendix chapter is adopted:

Chapter 3 - Division IV, Requirements for Group R, Division 4 Occupancies.

1.6 Uniform Fire Code (UFC), Volume 1, 1997 edition, as published by the International Fire Code Institute (IFCI), except as amended by provisions listed in R710-4-3, et seq.

The following UFC appendix chapters are adopted:

(a) Appendix I-C Stairway Identification.

(b) Appendix III-C Inspection, Testing and Maintenance of Water Based Fire Protection Systems.

(c) Appendix IV-A Interior Floor Finish.

(d) Appendix VI-A Hazardous Materials Classifications.

(e) Appendix VI-E Reference Tables from the Uniform Building Code.

1.7 Uniform Fire Code Standards (UFCS), Volume 2, 1997 edition, as published by the International Fire Code Institute (IFCI).

The following UFCS standards are amended as follows:

(a) UFCS 10-1, Selection, Installation, Inspection, Maintenance and Testing of Portable Fire Extinguishers is amended to adopt NFPA, Standard 10, 1998 edition.

(b) UFCS 10-2, Installation, Maintenance and Use of Fire Protection Signaling Systems is amended to adopt NFPA, Standard 72, 1996 edition.

(c) UFCS 52-1, Compressed Natural Gas (CNG) Vehicular Fuel Systems is amended to adopt NFPA, Standard 52, 1995 edition.

(d) UFCS 79-1, Foam Fire Protection Systems is amended to adopt NFPA, Standard 11, 1994 edition.

(e) UFCS 82-1, Liquefied Petroleum Gas Storage is amended to adopt NFPA, Standard 58, 1995 edition.

1.8 Uniform Mechanical Code (UMC), 1994 edition, as published by the International Conference of Building Officials (ICBO), and as adopted by the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953.

1.9 Copies of the above codes are on file in the Office of Administrative Rules and the State Fire Marshal.

R710-4-2. Definitions.

"Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his authorized deputies, or the local fire enforcement authority.

"AWWA" means American Water Works Association.

"Board" means Utah Fire Prevention Board.

"Bureau of Fire Prevention or Fire Prevention Bureau" means the AHJ.

"Fire Chief or Chief of the Department" means the AHJ.

"Fire Marshal" means the AHJ.

"Fire Department" means the AHJ.

"ICBO" means International Conference of Building Officials.

"IFCI" means International Fire Code Institute.

"LSC" means Life Safety Code.

"NEC" means National Electric Code.

"NFPA" means National Fire Protection Association.

"SFM" means State Fire Marshal.

"UBC" means Uniform Building Code.

"UCA" means Utah State Code Annotated 1953 as amended.

"UFC" means Uniform Fire Code.

"UFCS" means Uniform Fire Code Standards.

"UMC" means Uniform Mechanical Code.

R710-4-3. Amendments and Additions.

3.0 The following amendments and additions are hereby adopted for those buildings under the jurisdiction of the State Fire Marshal:

3.1 Door Closures

3.1.1 UFC, Article 11, Section 1111.2.2 Operation. Add the following Exception. In Group E Occupancies, Divisions 1 and 2, the door closures may be of the friction hold-open type on classrooms only.

3.2 Dumpsters

3.2.1 UFC, Article 11, Section 1103.2.2, with reference to Group E Occupancies, is amended to add the following

requirement:

Dumpsters and containers with an individual capacity of 1.5 cubic yards (40.5 cubic feet) or greater shall not be stored in buildings or placed within 20 feet of combustible walls, openings or combustible roof eave lines.

3.3 Fire Alarm Systems

3.3.1 General Provisions

The following rules pertain to newly installed systems or changes made to existing systems, except where noted:

(a) Presignal feature type systems are prohibited, except in I-3 Occupancies.

(b) Fire alarm system designs submitted to the AHJ, shall include complete floor plans showing location of all devices, occupancy use of each room, schematic wiring diagrams, battery calculations, and any other items deemed necessary.

3.3.2 Required Installations

(a) Fire alarm systems shall be provided as required in UFC, Article 10, Section 1007, and LSC Chapters as adopted, and in other rules promulgated by the Board.

(b) All state-owned buildings, college and university buildings, other than institutional, with an occupant load of one hundred (100) or more, all schools with an occupant load of fifty (50) or more, shall have an approved fire alarm system with the following features:

(1) Products-of-combustion (smoke) detectors installed throughout all corridors and common areas of egress at the maximum prescribed spacing of thirty feet on center, and no more than fifteen feet from the walls.

(2) In other than fully sprinklered buildings, automatic detectors shall be installed in each enclosed space, other than corridors, at maximum prescribed spacing as specified in NFPA, Standard 72, or by their listing.

(3) Manual fire alarm boxes shall be provided as required. In public and private elementary and secondary schools, manual fire alarm boxes shall be provided in the boiler room, kitchen, and main administrative office of each building, and any other areas as determined by the AHJ.

(4) The fire alarm system shall be connected to a proprietary panel, where provided within the complex.

3.3.3 Main Panel

(a) An approved key plan drawing and operating instructions shall be posted at the main fire alarm panel which displays the location of all alarm zones and if applicable, device addresses.

(b) The main panel shall be located in a normally attended area such as the main office or lobby. Location of the Main Panel other than as stated above, shall require the review and authorization of the SFM. Where location as required above is not possible, an electronically supervised remote annunciator from the main panel shall be located in a supervised area of the building. The remote annunciator shall visually indicate system power status, alarms for each zone, and give both a visual and audible indication of trouble conditions in the system. All indicators on both the main panel and remote annunciator shall be adequately labeled.

3.3.4 System Wiring

(a) System Wiring shall be in accordance with the following:

(1) The Initiating Device circuits (IDC) shall be Style D as defined in NFPA, Standard 72.

(2) The Indicating Appliance circuits (IAC) shall be Style Z as defined in NFPA, Standard 72.

(3) Signaling line circuits shall be Style 6 or 7 as defined in NFPA, Standard 72.

(b) All junction boxes shall be adequately identified as part of the fire alarm system. Covers for the concealed boxes shall be painted red.

3.3.5 System Devices

All equipment and devices shall be listed and/or labeled by a nationally recognized testing laboratory for fire alarm use.

3.3.6 Fan Shut Down

(a) The fan shut down relay(s) in the air handling equipment shall be normally energized, and connected through and controlled by a normally closed contact in the fire alarm panel, or a normally closed contact of a remote relay under supervision by the main panel. The relays will transfer on alarm, and shall not restore until the panel is reset.

(b) Duct detectors required by the UMC, shall be interconnected, and compatible with the fire alarm system.

3.3.7 Maintenance and Tests

The owner/administrator of each building shall insure maintenance and testing as required in UFC, Article 10, Section 1001.4 and 1001.5. A written log, verifying these tests, shall be kept on file for inspection by the AHJ.

3.4 Fireworks

3.4.1 UFC, Article 78, Section 7802.3 is amended to include the following Exception:

3. 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, Utah Code Annotated 1953.

3.5 Health Care Facilities

3.5.1 LSC Chapters 12 and 13 Sections 12-1.2.4 and 13-1.2.4 (Exiting Through Adjoining Occupancies) exception is deleted.

3.5.2 LSC Chapter 13, Section 13-3.6.1, (Rooms Allowed open to Corridor) exceptions No. 1, No. 5, No. 6, and No. 8 are deleted.

3.6 Hydrants, Fire

3.6.1 The fire department connection on automatic fire sprinkler and standpipe systems shall be located a reasonable distance as approved by the AHJ.

3.7 Fire Sprinklers

3.7.1 Class 1 and Class 2 fire protection systems, as defined in AWWA, M14, Second Edition, "Recommended Practice for Backflow Prevention and Cross-Connection Control," shall be provided with a listed alarm check valve with standard trim.

3.7.2 Antifreeze systems installed in Class 1 and Class 2 fire protection systems shall be installed as required in NFPA, Standard 13, and a backflow preventing device shall be installed as required in the Uniform Plumbing Code.

3.8 Water Supply Analysis

3.8.1 For proposed construction in both sprinklered and unsprinklered occupancies, the owner or architect shall provide an engineer's water supply analysis evaluating the available water supply.

3.8.2 The owner or architect shall provide the water supply analysis during the preliminary design phase of the proposed

construction.

3.8.3 The water analysis shall be representative of the supply that may be available at the time of a fire as required in NFPA, Standard 13, Appendix A-7-2.1.

3.9 Fire Drills

3.9.1 UFC, Article 13, Section 1303.3.3.2(1)is amended to include the additional Exception:

2. A fire drill in secondary schools shall be conducted at least every two months, to a total of four fire drills during the nine month school year. The first fire drill shall be conducted within the first two weeks of the school year.

R710-4-4. 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.

R710-4-5. Validity.

The Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the codes hereby adopted, be declared, for any reason, to be invalid, it is the intent of the Board that it would have passed all other portions of this Board action, independent of the elimination here from of any such portion as may be declared invalid.

R710-4-6. Conflicts.

In the event where separate requirements pertain to the same situation in the same code, or between different codes as adopted, the more restrictive requirement shall govern, as determined by the AHJ, or his authorized representative.

R710-4-7. Adjudicative Proceedings.

7.1 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.

7.2 A person may request a hearing on a decision made by the AHJ, by filing an appeal to the Board within 20 days after receiving final decision from the AHJ.

7.3 All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

7.4 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

7.5 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

7.6 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

7.7 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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Notice of Continuation June 19, 1997

R746. Public Service Commission, Administration.
R746-365. Intercarrier Service Quality.
R746-365-1. General Provisions.

A. Application and Authority -- This rule shall apply to telecommunications corporations that are obligated to interconnect facilities and equipment for the mutual exchange of telecommunications traffic pursuant to 54-8b-2.2.

1. This rule provides service guidelines to ensure that telecommunications corporations, individually and jointly, will engineer, design, equip and provision an efficient public telecommunications network with attendant operational support systems and joint network planning processes that will:

a. prevent impairment of public telecommunication services attributable to the provisioning of essential facilities and services used to provide local exchange service, including unreasonable blocking of telecommunications traffic carried by or exchanged between the networks of multiple telecommunications corporations;

b. ensure that each incumbent local exchange carrier timely provides essential interconnection facilities and services to other telecommunications corporations that is at least equal in quality to that provided by the incumbent local exchange carrier to itself or to any of its subsidiaries or affiliates, or to any other carrier with whom the incumbent local exchange carrier interconnects, or provides interconnection facilities and services or that otherwise is adequate, efficient, just and reasonable.

2. This rule defines guidelines relating to interconnection and the exchange of traffic that apply to all telecommunications carriers and further defines additional guidelines relating to interconnection and the exchange of traffic that apply only to incumbent local exchange carriers, as required by the federal Telecommunications Act of 1996, 47 U.S.C. Section 251.

3. This rule specifies network performance and service quality guidelines applicable to telecommunications corporations interconnecting pursuant to 54-8b-2.2 and upon which the Commission may rely in determining whether service is just, adequate, and reasonable.

4. This rule establishes specific network monitoring and reporting obligations for incumbent local exchange carriers.

5. Incumbent local exchange carriers with less than 50,000 access lines shall be exempt from this rule. If a carrier receives a bona fide request for interconnection made pursuant to the notice and exemption provisions of 47 U.S.C. Section 251 (f), in the event the Commission determines that the requirements of Section 251(f)(1)(B) are met and the Commission terminates the exemption, the Commission may also consider what service standards shall apply to the incumbent local exchange carrier and may promulgate rules to implement applicable standards.

6. The adoption of this rule by the Commission neither precludes subsequent amendment pursuant to applicable statutory procedures, nor the grant of a temporary exemption by the Commission as provided in R746-100-16, Deviation from Rules.

R746-365-2. Definitions.

A. The meaning of terms used in these rules shall be consistent with their general usage in the telecommunications industry unless specifically defined in 54-8b-2, R746-348, or this rule. As used in this rule, unless context states otherwise, the following definitions shall apply:

1. "Affiliate" -- means, with respect to any telecommunications corporation, a person that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this subsection, the term "own" means to own an equity interest, or the equivalent, of more than ten percent.

2. "Blocking" -- means the occurrence of insufficient capacity between the end office or tandem of a telecommunications corporation and the end office or tandem of another telecommunications corporation, and includes a call not completed because of insufficient capacity usually evidenced by a fast busy signal or message that circuits are busy.

3. "Busy Hour" -- means the uninterrupted period of 60 minutes during the day when the traffic is at its maximum.

4. "Business Day" -- means any day other than Saturday, Sunday or other day on which commercial banks in Utah are authorized or required to close.

5. "CFR" -- means the Code of Federal Regulations.

6. "Commission" -- means the Public Service Commission of Utah.

7. "Competitive Local Exchange Carrier" (CLEC) -- means an entity certificated to provide local exchange services that does not otherwise qualify as an incumbent local exchange carrier.

8. "Delayed Service Order" -- means a written or electronic order for an essential interconnection service or facility that is not filled on or before the standard installation interval or the date specified in a FOC, whichever occurs first.

9. "End User" -- means the person, firm, partnership, corporation, municipality, cooperative, organization, or governmental agency purchasing the telecommunications service for its own use, and not for resale.

10. "FCC" -- means the Federal Communications Commission.

11. "Federal Act" -- means the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified at 47 U.S.C. Section 151 et seq.).

12. "Firm Order Confirmation" (FOC) -- means notice provided by one telecommunications corporation to another in electronic or manual form of acceptance of a service order and the date that the service order will be completed.

13. "Incumbent Local Exchange Carrier" (ILEC) -- is defined as it is in R746-348, Interconnection.

14. "Interoffice Trunk Facilities" -- means the facilities, including transport, switching and cross-connect facilities, necessary for the transmission and routing of telephone exchange service between two end offices, or an end office and a tandem office.

15. "Local Exchange Carrier" -- means a telecommunications provider, authorized by the Commission, that provides local exchange service in a defined geographic service territory.

16. "Network Element" or "Network Facility" -- is defined as it is in R746-348-2. Interconnection.

17. "Order Completion Notification" (OCN) -- means notice provided by one telecommunications corporation to another in electronic or manual form that a service order has been completed.

18. "OSS Interface" -- means a system of communications links, computer hardware and software and associated equipment providing access into an ILEC's operational support systems for human-to-computer or computer-to-computer communication. This definition is conjunctive to the definition of "operational support" contained in R746-348-2, Interconnection.

19. "Service Order" -- means a written or electronic request for essential facilities or services made to effectuate 54-8b-2.2 and section 251 of the federal act.

20. "Trouble Report" -- means an oral, written or electronic report received by a telecommunications corporation from an end user of public telecommunications service, or, an oral, written or electronic report received by one telecommunications corporation from another who purchases essential facilities or services from the former. In either case, a Trouble Report communicates improper functioning of facilities over which the providing telecommunications corporation exercises control. A trouble report is used by telecommunications corporations to monitor repair and maintenance actions required for disposition of out-of-service or substandard service conditions.

21. "Wholesale Services" -- means essential services available to telecommunications corporations for the purpose of resale to end users.

22. "Wire Center" -- means a building that contains the necessary telecommunications facilities and functions to terminate, switch, route and interconnect local exchange, interoffice, and interexchange public telecommunication services.

R746-365-3. Network Guidelines Applicable to All Telecommunications Corporations.

A. Engineering -- All telecommunications corporations shall construct network facilities in conformance with network design standards and specifications.

B. Stricter Standards -- If an interconnection agreement is adopted pursuant to negotiation or arbitration under the Federal Act, the agreements may contain obligations and performance standards for network facilities and services that are stricter than the guidelines contained in this rule.

R746-365-4. Service Quality Guidelines.

A. Service Quality Applicable to All Telecommunications Corporations --

1. Carrier Provisioning Intervals -- Each telecommunications corporation shall provide essential facilities and associated services in accordance with the following provisioning intervals and shall separately measure each provisioning interval for commonly used circuit or facility types. The provisioning interval is the elapsed time measured in hours from a telecommunications corporation's receipt of a service order to return of an OCN. The percentage of service orders completed on time will be determined by the number of orders completed within the installation interval or the committed due date specified in a FOC. The cumulative elapsed time for each circuit or facility type is divided by the total number of corresponding completed service orders for each circuit or facility type to derive measures of service order flow-through, as further enumerated in R746-365-5. A telecommunications corporation shall return a FOC within two business days of receipt of a service order from another telecommunications corporation.

a. Interoffice Trunking Facilities -- Pursuant to forecasting requirements established in R746-365-6, forecasted trunk, routing and switching facilities shall be provisioned to any requesting local exchange carrier within 30 days of receipt of a service order, unless otherwise agreed to by the requesting carrier.

(i) Service Orders Presented Under Approved Forecasts -- A telecommunications corporation shall complete all service orders for essential facilities and services requested by an other telecommunications corporation that comport with four-month projections contained in a joint forecast developed pursuant to R746-365-6(C).

b. Number Portability -- Telecommunications corporations shall provide either interim number portability or permanent number portability to a requesting carrier. The installation interval for interim number portability shall not exceed three business days following receipt of a service order. Permanent number portability shall be provided within 60 days following notification by a requesting carrier.

2. Trouble Reports --

a. Receipt, Investigation and Recording -- Each telecommunications corporation shall provide for the receipt of trouble reports 24 hours a day, seven days a week. Each telecommunications corporation providing public telecommunications service shall investigate and respond to each trouble report. Each telecommunications corporation shall maintain a record of trouble reports made by end users and other telecommunications corporations which complies with R746-365-5(B)(4).

b. Emergency Out-of-Service -- Provisions shall be made to clear emergency out-of-service trouble at all hours, consistent with the public interest and the personal safety of a telecommunication corporations personnel. Emergency or alternative service shall be provided local law enforcement and public safety agencies during the period of any network interruption.

c. Notice of Unusual Repairs and Planned Interruptions -- If unusual repairs preclude prompt disposition of a reported trouble, telecommunications corporations shall notify all affected telecommunications corporations. If service must be interrupted for purposes of rearranging facilities or equipment, all affected telecommunications corporations shall be notified and the work shall be completed in the least disruptive manner in order to minimize public inconvenience.

d. Repair Intervals -- Each telecommunications corporation shall seek to clear out-of-service trouble reports received from another telecommunications corporation within the following intervals, unless other repair intervals have been agreed to:

TABLE

DS - 3, OC - 3 and higher	2 hours
DS - 1, Fractional DS - 1, Design DS - 0, and Local Interconnection Trunks	4 hours
Residential and Business Resale POTS	24 hours

The repair interval for clearing a trouble between telecommunications corporations is the elapsed time measured in hours and tenths of hours from the time a trouble report is received by a telecommunications corporation to the time the telecommunications corporation returns a valid trouble resolution notification. Elapsed time shall be measured by common circuit or facility types and trouble disposition and closure recorded in accordance with R365-5(B)(4).

3. Network Performance Levels -- Each telecommunications corporation shall engineer, furnish and install essential facilities and services designed to meet busy hour demand, and to prevent unreasonable blocking. The following minimum network performance standards apply to:

a. Interoffice Facilities --

(i) Local and extended area service interoffice trunk facilities shall have a minimum engineering design standard of (P.01) grade of service.

(ii) Intertandem facilities shall have a minimum engineering design standard of B.0025 (P.0025) grade of service.

b. Outside Plant -- Each telecommunications corporation shall engineer, construct and maintain cable and wire between an end user network interface device and the serving wire center in conformance with current industry standards, as described in R746-365-3(B), and common engineering practices.

B. Service Quality and Other Network Guidelines Applicable to ILECs --

1. Operational Support Systems --

a. OSS Interfaces -- Each ILEC shall undertake all commercially reasonable efforts to facilitate parity of access to operational support systems the incumbent local exchange carrier uses to store and retrieve information related to network engineering and administration.

b. Testing of OSS Interfaces -- Each telecommunications corporation shall upon request jointly conduct with one or more telecommunications corporations testing of OSS interfaces used to obtain access to operational support systems. OSS Interface testing shall commence not more than 45 days after a request for testing is received by a telecommunications corporation. The telecommunications corporations shall determine the duration of tests which shall be conducted among noncommercial end user accounts. No unreasonable limitation shall be imposed by an ILEC on another telecommunications corporation's ability to test intercarrier OSS Interfaces to ensure compatibility between ILEC and the other telecommunications corporation's operational support systems.

2. Network Provisioning Intervals -- Each ILEC shall provide essential facilities and services that comply with the following installation intervals:

a. Network Elements -- Each ILEC shall provision essential network facilities and services in accordance with the following intervals and shall measure provisioning intervals for each of the following loop facilities and services as described in R746-365-5-(C)(3)(c).

(i) Unbundled Loops -- Provisioning intervals for an unbundled loop will vary by circuit and facility type, the number of loops requested on a service order, availability of facilities and whether or not a dispatch of ILEC personnel must occur. The following essential facilities will be provisioned for telecommunications corporations within the specified intervals.

TABLE

Facility Type	Quantity	Interval
DSO or analog equivalent, dispatch, facilities available:	1 - 24	5 days
	24 - n	negotiated
DSO or voice grade equivalent, no dispatch:	1 - 24	3 days
	24 - n	7-10 days
DS1 -- Facilities provisioned and available:		5 days
ISDN -- Facilities provisioned and available:		7 days
XDSL -- Facilities provisioned and available:		7 days
DS3 -- Facilities provisioned and available:		7 days
OC3 -- Facilities provisioned and available:		15 days
OC4 - Higher -- Facilities provisioned and available:		15 days or negotiated due date.

b. Wholesale Services -- Installation intervals for wholesale services shall vary depending upon whether an existing end user service provided by an ILEC is transferred to another telecommunications corporation, or, is a new service installation.

(i) An ILEC shall transfer wholesale services without changes for an existing end user served by the ILEC within one business day following receipt of a service order from the telecommunications corporation.

(ii) An ILEC shall transfer wholesale service with changes for an existing end user served by the ILEC within three business days following receipt of a service order from the telecommunications corporation.

(iii) An ILEC shall install new wholesale service to a new end user, if facilities are available, within three days following receipt of a service order from the telecommunications corporation.

c. Collocation -- The following provisioning intervals and optional arrangements are common to both virtual and physical collocation:

(i) Upon receipt by an ILEC of a request for collocation, the ILEC shall within 15 days notify the telecommunications corporation whether sufficient space exists. If the telecommunications corporation disputes an ILECs denial of a request for collocation, and the carriers cannot negotiate a mutually satisfactory resolution, the telecommunications corporation may petition the Commission pursuant to Section 54-8b-17 for an expedited hearing and resolution of the dispute. The burden shall be on the ILEC to demonstrate to the Commission that collocation is not practical due to space limitations or is technically infeasible.

(ii) If collocation is available, the ILEC shall within 25 days following receipt of a request for collocation provide a written quotation containing all non-recurring charges for construction of the telecommunications corporation's requested collocation arrangement.

(iii) The telecommunications corporation shall within 30 days following receipt of the ILEC's quotation, by written notice to the ILEC: 1) accept the quotation; 2) withdraw the request for collocation; or, 3) provide the ILEC an independent contractor quotation for construction of the requested collocation arrangement.

(iv) If the telecommunication corporation accepts the quotation from the ILEC, collocation equipment shall be installed on the ILEC's premises in accordance with the following provisioning intervals: 1) For physical collocation arrangements, the ILEC shall within 45 days of the telecommunication corporation's acceptance of the ILEC's quotation complete construction of the collocation space necessary and sufficient for installation of the CLEC's collocated interconnection facilities. The ILEC shall grant the telecommunications corporation access to the collocation space to install network elements therein. 2) For virtual collocation arrangements, the ILEC shall within 45 days after delivery of the telecommunication corporation's collocation equipment complete provisioning of all network facilities ordered by the telecommunications corporation.

(v) If the telecommunication corporation provides the ILEC an independent contractor quotation for construction associated with a collocation arrangement, the ILEC shall within 15 days of receipt of the quotation: 1) accept the proposal and grant to the independent contractor access to the ILEC's premises to complete construction of the collocation space and installation of the collocated interconnection facilities; 2) amend the ILEC's own quotation to perform on substantially similar terms, including, without limitation, price, the services specified in the independent contractor's quotation. If the telecommunication corporation accepts the ILEC's amended quotation, construction of the collocation space shall proceed as described in R746-365-4(B)(3)(c)(iv); or, 3) reject the proposal. If the ILEC refuses to accept an independent contractor quotation or amend its own quotation, the telecommunications corporation may petition the Commission for an expedited hearing and resolution of the dispute pursuant to R746-365-8(B).

R746-365-5. Monitoring and Reporting Requirements.

A. Availability and Retention of Records --

1. Availability of Records -- Each telecommunications corporation shall make network engineering and administrative records available for inspection by the Commission or its designee during normal operating hours.

2. Retention of Records -- All information required by this rule shall be preserved for at least 36 months after the date of entry.

3. Information Maintained -- Each telecommunications corporation shall maintain records of its network engineering and administrative operations in sufficient detail to permit review of network performance, provisioning intervals and general service quality provided other telecommunications corporations.

4. Rights of Division of Public Utilities -- Upon request made by the Division of Public Utilities, a telecommunications corporation shall provide within seven business days copies of any information requested. The Division of Public Utilities may request frequent monitoring of network performance, provisioning intervals and general service quality if evidence exists that public telecommunications services are impaired.

5. Special Study -- When requested by the Division of Public Utilities (the Division), an ILEC may file a study with the Division of Public Utilities evidencing actual provisioning intervals for network facilities and services or actual repair intervals for services provided to a telecommunications corporation, to an affiliate, or, aggregated for its ten largest customers. The Division shall investigate the source of the ILEC's operational support evidence and, at its discretion, petition the Commission pursuant to R746-100-16, Deviation from Rules. If the Commission grants consideration of a petition, intervenors may audit the ILEC's operational support evidence underlying the results of its study.

B. Network Monitoring and Performance Reporting Obligations Applicable to All Telecommunications Corporations --

1. Monitoring -- Each telecommunications corporation shall monitor the use of its network so as to:

a. issue the reports required by this section; and

b. monitor the use of all trunk groups and other interconnection facilities and equipment on its own side of the point of interconnection between its network and the network of each interconnecting telecommunications corporation.

2. Call Blocking -- Each telecommunications corporation shall maintain a daily record, by wire center, of call blocking. The record shall indicate the percentage of calls blocked by trunk group utilized by each interconnecting telecommunications corporation. Each telecommunications corporation shall notify an interconnecting telecommunications corporation immediately if call blocking on any trunk group within in any wire center exceeds standard industry levels specified in R746-365-4(A)(2).

3. Delayed Service Orders -- Each telecommunications corporation shall maintain a record, by wire center, of each instance when it fails to supply essential facilities and services to an interconnecting telecommunications corporation in accordance with the provisioning intervals established in R746-365-4. The record shall provide the following data:

a. the name and address of the telecommunications corporation;

b. the circuit or facility type requested in the service order;

c. the date and hour the service order was received;

d. the reason for the delay;

e. the number of days the order has been delayed;

f. the expected order completion date for each service order;

g. whether an initial service order was supplemented by the requesting telecommunications corporation and, if so, the date and time the supplement was approved by the providing carrier;

h. a copy of the FOC provided the requesting telecommunications corporations.

4. Carrier Trouble Reports -- Each telecommunications corporations shall maintain a record, by wire center, of trouble reports received from another telecommunications corporations. The record shall:

a. identify the telecommunications corporation experiencing trouble;

b. the affected services;

c. the time, date and nature of the report;

d. the cause and action taken to clear the trouble and its recorded disposition;

e. the date and time of trouble clearance.

C. Performance Monitoring and Reporting Obligations Applicable to ILECs --

1. Service Provisioning Reports -- Each ILEC will provide interconnecting telecommunications corporations performance monitoring reports detailing the ILEC's provisioning of:

a. services to the ILEC's retail customers in the aggregate;

b. essential facilities and services provided to itself or any retail affiliate purchasing interconnection or access;

c. essential facilities and services provided in the aggregate to other telecommunications corporations purchasing interconnection; and

d. essential facilities and services provided to individual telecommunications corporations purchasing interconnection.

2. Service Response Description -- The ILEC shall develop a detailed narrative description of the procedures it employs in responding to calls from:

a. its retail customers;

b. its affiliated customers purchasing essential facilities and services for interconnection or local exchange access;

c. interconnecting telecommunications corporations; and

d. The service response description will be made available upon request to telecommunications corporations purchasing essential facilities and services for interconnection. The ILEC shall comply with the procedures outlined in its service response description.

3. Performance Monitoring Reports -- Performance monitoring reports shall include the following reports in addition to any additional reports the Commission may request:

a. Pre-Ordering Data -- Pre-ordering data means network administration data that resides in an ILECs operational support systems that includes, but is not limited to: facility availability, service availability, customer service records, appointment scheduling, telephone number reservation, feature function availability, and street address validation.

(i) Average OSS Response Interval for Pre-Ordering Data -- This report measures average response time per transaction for: customer service records; due date availability, address validation, feature function availability and telephone number selection and reservation. It shall be measured as: the Average Response Interval. The Average Response Interval will equal the quotient of the following formula: a dividend expressed as the sum total of the differences between minuends expressed in Query Response date and time and subtrahends expressed in Query Submission date and time, the sum total dividend being divided by a divisor expressed as the number of Queries submitted in the reporting period.

(ii) OSS Interface Availability -- This report measures the percentage of time an OSS Interface is actually available for use compared to scheduled availability. It shall be measured as: the Percent System Availability. The Percent System Availability will equal the quotient of the following formula: the dividend expressed in the hours the OSS Interface functionality is actually available to CLECs during the report period divided by a divisor expressed in the number of hours the functionality was scheduled to be available during the reporting period, the quotient being expressed as a percentage.

b. Ordering --

(i) Firm Order Confirmation Timeline -- This report measures the average interval from receipt of a service order to distribution of an order confirmation notice. It shall be measured as: measured as the Mean FOC Interval. The Mean FOC Interval will equal the quotient of the following formula: the dividend expressed as the sum total of the differences of minuends expressed as the date and time of Firm Order Confirmation (FOCs) and subtrahends expressed as the date and time of Order acknowledgment, the sum total dividend being divided by a divisor expressed in the number of Orders confirmed in the reporting period.

(ii) Reject Timelines -- This report measures average response time from receipt of service order to distribution of rejection notice. It shall be measured as: the Mean Reject Interval. The Mean Reject Interval will equal the quotient of the following formula: a dividend expressed as the total sum of the difference of minuends expressed as the date and time of Order Rejection and subtrahends expressed as the date and time of Order Acknowledgment, the sum total dividend being divided by a divisor expressed in the number of Orders Rejected in the reporting period.

(iii) Percentage Rejects -- This report measures the percentage of total service orders received and rejected by the ILEC due to errors or omissions in the service order.

(iv) Timeliness of Order Completion Notification -- This report measures average response time from the actual completion date to distribution of service order completion notification. It shall be measured as: the Completion Interval. The Completion Interval shall equal the quotient of the following formula: a dividend expressed as the sum total of the differences of minuends expressed as the date and time of Notice of Completion issued to the telecommunications corporations and subtrahends expressed as the date and time of Work Completion by the ILEC, the sum total dividend being divided by a divisor expressed as the number of Orders completed during the reporting period.

(v) Delayed Order Interval -- This report measures uncompleted orders where the committed due date on a firm confirmation order has passed. It shall be measured as: the Mean Delayed Order Interval. The Mean Delayed Order Interval will equal the quotient of the following formula: a dividend expressed as the sum total of the differences of minuends expressed as the reporting period close date and subtrahends expressed as the Committed Order Due date, the sum total dividend being divided by a divisor expressed as the number of Orders Pending and Past the Committed Due Date.

c. Provisioning --

(i) Average Completion Interval -- This report measures the average time from an ILECs receipt of service order to the completion date provided on an OCN. It shall be measured as: the Average Completion Interval. The Average Completion Interval will equal the quotient of the following formula: a dividend expressed as the sum total of the differences of minuends expressed as the OCN date and time and subtrahends expressed as the Service Orders Submission date and time, the sum total dividend being divided by a divisor expressed as the count of Orders completed in the reporting period.

(ii) Percentage of Orders Completed On Time -- This report measures the percentage of total orders completed on or before the completion date provided on an OCN. It shall be measured as: the Percent Orders Completed on Time. The

Percent Orders Completed on Time will equal the quotient of the following formula: a dividend expressed as the count of Orders Completed within ILEC Committed Due Date and a divisor expressed as the count of Orders Completed in the reporting period, the quotient being expressed as a percentage.

(iii) Percentage Missed Installation Appointments -- This report measures the percentage of service orders where installation of service is not performed at a time in which the customer concurs. It excludes misses when the other telecommunications corporation or end user causes the missed appointment. It shall be measured as: the Percentage Missed Installation Appointments. The Percentage Missed Installation Appointments will equal the quotient of the following formula: a dividend expressed as the count of appointments missed and a divisor expressed as the count of Wholesale Orders completed in the reporting period, the quotient being expressed as a percentage.

(iv) New Service Installation Trouble Within 30 Days -- This report measures the percentage of new service installations which prove defective within 30 days following completion of a service order. It shall be measured as: the Percentage New Service Installation Trouble within 30 days. The Percentage New service Installation Trouble within 30 days will equal the quotient of the following formula: a dividend expressed as the count of defective New Service Install in the past 30 days divided by a divisor expressed as the count of total New Service Installs in the past 30 days; the quotient being expressed as a percentage.

d. Maintenance --

(i) Trouble Report Rate -- This report measures the frequency of direct or referred trouble report incidents across a universe of facilities where the cause is determined to be in network facilities. It is measured as a percentile of lines or circuit types in service. It shall be measured as: the Trouble Report Rate. The Trouble Report Rate will equal the quotient of the following formula: a dividend expressed as the count of Initial and Repeated Trouble Reports in the reporting period divided by a dividend expressed as the number of Service Access Lines in service at the end of the reporting period; the quotient being expressed as a percentage. For purposes of R746-365-5C(1)(c) and (d), an ILEC shall exclude from its count of trouble reports queries made to the ILEC from another telecommunications corporation's end-user customers who are not served by the ILEC.

(ii) Missed Repair Appointments -- This report measures the percentage of trouble reports not cleared by the committed date and time. It excludes misses where the telecommunications corporation or end user caused the missed appointment. It shall be measured as: the Percentage Missed Repair Appointments. The Percentage Missed Repair Appointments will equal the quotient of the following formula: a dividend expressed as the count of Repair Appointments Missed divided by a divisor expressed as the count of Total Appointments; the quotient being expressed as a percentage.

(iii) Mean Time to Restore -- This report measures the restoral interval for resolution of maintenance and repair troubles. It measures the elapsed time from receipt of a trouble report to the time the reported trouble is cleared. It shall be measured as: the Mean Time to Restore. The Mean Time to Restore will equal the quotient of the following formula: a dividend expressed as the sum total of the differences of minuends expressed as the date and time of Ticket Closure and subtrahends expressed as the date and time of Ticket creation, the sum total dividend being divided by a divisor expressed as the count of Trouble Tickets Closed in the reporting period.

(iv) Percentage Repeat Trouble Reports Within 30 Days -- This report measures the percentage of trouble reports on a line or circuit that has had a previous trouble report in the preceding 30 days. It shall be measured as: the Repeat Trouble Rate. The Repeat Trouble Rate will equal the quotient of the following formula: a dividend expressed as the count of Service Access Lines generating more than one Trouble Report within a continuous 30 day period divided by a divisor expressed as the number of Trouble Reports in the report period; the quotient being expressed as a percentage.

e. Billing --

(i) Timeliness of Daily Usage Feed -- This report measures the interval in hours between the recording of usage data and the transmission in proper format to a telecommunications corporation. It shall include usage originating at ILEC switches, resale and UNE switching, and not alternately billed messages received from other ILECs. It shall be measured as: the Mean Time to Provide Recorded Usage Records. The Mean Time to Provide Recorded Usage Records will equal the quotient of the following formula: a dividend expressed as the sum total of the differences of minuends expressed as the data set transmission time and subtrahends expressed as the time of message recording the sum total dividend being divided by a divisor expressed as the count of all messages transmitted in the reporting period; the quotient being expressed as a percentage.

f. Specific Performance Monitoring Reports -- The Commission, the Division of Public Utilities or a telecommunications corporation may request from the ILEC a report on a specific basis rather than on an average basis with respect to any of the information described in the foregoing performance monitoring reports.

4. Identifiable Carrier-Specific Information -- An ILEC shall ensure that any carrier specific information contained in the performance monitoring reports is disclosed only to the individual carrier. The ILEC shall not use any information specific to a carrier for any purpose other than the reporting requirements contained herein.

R746-365-6. Joint Planning and Forecasting.

A. Planning --A telecommunications corporation will meet with another telecommunications corporation, interconnecting or planning to interconnect within the next calendar quarter, to participate in joint forecasting and planning as necessary to accommodate the design and provisioning responsibilities of both telecommunications corporations. At a minimum, the telecommunications corporations will meet once every calendar quarter.

B. Forecasting --

1. Forecasting is the joint responsibility of the telecommunications corporations. A forecast of interconnecting trunk group and other facilities and equipment required by the telecommunications corporations is required on a quarterly basis. The quarterly forecast shall project requirements for the

following time intervals:

a. four months;

b. one year; and

c. three years.

To the extent practical, the one-year and three-year forecasts will be supplemented with historical data from time to time as necessary to improve the accuracy of the forecasts.

2. The forecasts shall include, for tandem-switched traffic, the quantity of the tandem-switched traffic forecasted for each end office.

3. The use of Common Language Location Identifier (CLLI-MSG) shall be incorporated into the forecasts.

4. The forecasts shall include a description of major network projects anticipated for the following year that could affect the other party to the forecast. Major network projects include trunking or network rearrangements, shifts in anticipated traffic patterns, or other activities that are reflected by a significant increase or decrease in trunking demand for the succeeding forecasting period.

5. The forecasts, in narrative form, shall also describe anticipated network capacity limitations, including any trunk groups when usage exceeds 80 percent of the trunk group capacity, and the procedure for eliminating capacity problems before any trunk group experiences blocking in excess of the standards set forth in R746-365-5(B)(2).

6. The forecasts shall include the requirements of the telecommunications corporations for each of the following trunk groups:

a. intraLATA toll and switched access trunks;

b. EAS and local trunks;

c. directory assistance trunks;

d. 911 and E911 trunks;

e. operator service trunks;

f. commercial mobile radio service and wireless traffic; and

g. meet point billing trunks.

7. Unless otherwise agreed, forecasting information exchanged between interconnecting local exchange carriers, or disclosed by one interconnecting local exchange carrier to the other, shall be deemed confidential and proprietary.

C. Procedure for Forecasting --

1. At least 14 days before a scheduled joint planning and forecasting meeting, the telecommunications corporations shall exchange information necessary to prepare the forecast described in R746-365-6(B). At a minimum, the telecommunications corporation will provide the other with the following information.

a. Existing Interconnection Locations -- For existing interconnection locations between the telecommunications corporations, each telecommunications corporation shall provide:

(i) blocking reports, at the individual trunk group level, detailing blocking at each end office, including overflow volumes, and blocking between the telecommunications corporation's end offices and tandem switches;

(ii) the existence of any network switching, capacity or other constraints.

(iii) any network reconfiguration plans for the telecommunications corporation's network.

b. New Markets -- They may request the following information concerning a specific market area in the other's Utah service territory into which they desire to expand their own network:

(i) The network design and office types in the market area.

(ii) The capabilities of the network in the market area.

(iii) Any plans to reconfigure the network in the market area.

c. Future need information -- The telecommunications corporation will provide the other with the following information:

(i) The number of trunk lines requested and the projected century call second loads used to formulate such request.

(ii) Whether internet providers will be served and the projected number of internet provider lines needed.

(iii) The projected busy hour(s) of the trunk groups.

(iv) The expected century call seconds on busy hours - how many century call seconds the last idle trunk line will carry.

(v) The projected service dates for the requested trunking groups for the first quarter forecasted.

(vi) The telecommunications corporation's forecast for direct trunk groups to any particular end office.

(viii) Any ramp up time anticipated for the use of the requested trunk lines, and an estimate of when the trunk group will reach capacity limits.

(x) Whether the telecommunications corporation requests usage and overflow data on the trunk groups which are directly connected to the other's end offices.

2. The telecommunications corporation shall prepare a joint forecast consistent with the requirements of R746-365-6(B) and shall submit the forecast to the other at least seven days before the scheduled joint planning meeting.

3. Prior to the scheduled joint planning meeting, the telecommunications corporation shall notify the other whether it accepts the four-month forecast, rejects the four-month forecast, or proposes specific modifications to the four-month forecast.

a. If the telecommunications corporation rejects the four -month forecast or proposes modifications to the forecast, the telecommunications corporation shall submit a written statement to the other outlining the reasons why the forecast, as prepared by the other, is unacceptable. The statement shall be supported by written documentation to support the telecommunications corporation's position.

b. At the joint planning meeting, the telecommunications corporations may agree on the terms of the four-month forecast, as initially presented, or with modifications agreed to by them. If no agreement is reached, the telecommunications corporations shall jointly outline all areas of disagreement.

4. If the telecommunications corporations cannot agree on the terms of the quarterly four-month forecast, either local exchange carrier may commence an expedited dispute resolution proceeding before the Commission, as provided in Section 54-8b-17. In that proceeding, the burden of persuasion shall be on an ILEC to demonstrate that a four-month quarterly forecast submitted by a CLEC is unreasonable.

5. To the extent the telecommunications corporations agree to the terms of a forecast, the terms shall be deemed approved for purposes of this section, and only those portions

of a quarterly forecast actually in dispute shall be subject to the expedited dispute resolution proceeding.

6. If the telecommunications corporations agree on a four-month quarterly forecast, or, to the extent a forecast is approved by the Commission pursuant to the expedited dispute resolution proceeding, a telecommunications corporation shall be obligated to satisfy all service order requests made by the ordering telecommunications corporation that are consistent with the four-month projections contained in the approved forecast. Compliance with the terms of the forecast shall be based on the network provisioning interval standards set forth in R746-365-4(B)(2) as applicable.

D. Capacity Beyond the Four-month Forecast -- If a telecommunications corporation desires to order trunk groups, equipment, or facilities beyond the four-month forecast, but consistent with the one-year and three-year forecast, the telecommunications corporation may order the additional quantity if it pays a capacity reservation charge to the other telecommunications corporation from whom it orders.

E. Trunk Group Underutilization -- If a trunk group is under 60 percent of centum call seconds (ccs) capacity on a monthly average basis for each month of any three-month period, either telecommunications corporation may request to resize the trunk group, which resizing will not be unreasonably withheld. If the resizing occurs, the trunk group shall not be left with less than 25 percent excess capacity. In all cases the network performance levels and the network provisioning intervals as set forth in R746-365-4(A)(2) and R746-365-4(B)(3) shall be maintained. If the telecommunications corporations cannot agree to a resizing, either of them may file a petition with the Commission for an expedited dispute resolution proceeding as provided in Section 54-8b-17.

F. Point of Contact -- Telecommunications corporations shall provide a specified point of contact for planning, forecasting and trunk servicing purposes. The specified point of contact shall have all authority necessary to fulfill the responsibilities as set forth in this section.

R746-365-7. Remedies.

A. Commission Assessed Penalties -- The Commission may assess penalties, as provided in 54-7-25 and 54-8b-17, against any telecommunications corporation that unreasonably fails or refuses to comply with this rule, including, without limitation, the provisioning and forecasting provisions contained in this rule.

B. Carrier Charges and Offsets --

1. Failure to Comply with This Rule -- If a telecommunications corporation fails to meet the network guidelines, service quality guidelines, reporting and monitoring requirements, or other duties imposed on it by this rule, any affected telecommunications corporations may file a petition with the Commission to enforce the provisions of this rule. The proceeding may be brought on an expedited basis as provided in 54-8b-17.

2. Service Interruption -- A telecommunications corporation shall be entitled to a billing credit against amounts owed to an other telecommunications corporation for service interruption as follows:

a. If the telecommunications corporation's service or facility from another telecommunications corporation is interrupted and remains out-of-service for more than four but less than eight continuous hours after being reported by the interrupted telecommunications corporation, or found to be out-of-service by the providing telecommunications corporation, whichever occurs first, appropriate adjustments shall be automatically made to the interrupted telecommunications corporation's bill. The adjustment shall be a billing credit equal to one tenth of the providing telecommunications corporation's monthly rate for the affected service.

b. If the interrupted telecommunications corporation's service or facility from the providing telecommunications corporation is interrupted and remains out-of-service for more than eight but less than 24 continuous hours after being reported by the interrupted telecommunications corporation, or found to be out-of-service by the providing telecommunications corporation, whichever occurs first, appropriate adjustments shall be automatically made by the providing telecommunications corporation to the interrupted telecommunications corporation's bill. The adjustment shall be a billing credit equal to the providing telecommunications corporation's monthly rate for the affected service.

c. If the interrupted telecommunications corporation's service or facility from the providing telecommunications corporation is interrupted and remains out-of-service for more than 24 continuous hours after being reported by the-of-service interrupted telecommunications corporation or found to be interrupted by the providing telecommunications corporation, whichever occurs first, appropriate adjustments shall be automatically made by the providing telecommunications corporation to the interrupted telecommunications corporation's bill. The adjustment shall be a billing credit equal to three times the providing telecommunications corporation's monthly rate for the affected service.

KEY: interconnection, public utilities, telecommunications
January 13, 1999 54-8b-2

R765. Regents (Board of), Administration.

R765-607. Utah Higher Education Tuition Assistance Program.

R765-607-1. Purpose.

To provide Utah Higher Education Assistance Authority ("UHEAA") policy and procedures for implementing the Utah Higher Education Tuition Assistance Program("UTAP," or "program"), UCA Title 53B, Chapter 7, Part 5, enacted in H.B. 135 by the 1998 General Session of the Utah Legislature.

R765-607-2. References.

2.1. Utah Code. Title 53B, Utah System of Higher Education, Chapter 7, Part 5.

2.2. State Board of Regents Policy R610, Board of Directors of the Utah Higher Education Assistance Authority.

R765-607-3. Effective Date.

These policies and procedures are effective January 4, 1999.

R765-607-4. Policy.

4.1. Program Description - UTAP is a matching grant program to provide incentives for Utah System of Higher Education community colleges and Utah State University to raise money for scholarships at the community colleges and at centers of the Utah State University. In UCA 53B-7-501, the Legislature recognizes "that tuition and general fee costs to students at Utah community colleges and established branch campuses and centers represent significant challenges for many of the students they serve, and that additional scholarship moneys for financially needy students attending those institutions is needed to ensure financial access to higher education. Program funds may be used only for matching grants for scholarship endowments to higher education institutions as provided herein.

4.2. Program Administration - The Board of Regents has delegated to the UHEAA Board of Directors the authority for govern UTAP on behalf of the Board of Regents. The program is administered by the Associate Commissioner for Student Financial Aid as Executive Director of UHEAA, reporting to the Commissioner of Higher Education.

4.3. Institutions Eligible to Participate - Eligible institutions include Snow College, Dixie College, the College of Eastern Utah, Utah Valley State College, Salt Lake Community College, and Utah State University on behalf of its off-campus centers.

4.4. Students Eligible to Receive UTAP Scholarships - To be eligible to receive a scholarship funded by an institutional endowment fund established under UTAP, a student must:

4.4.1. Be unconditionally admitted and currently enrolled in a degree, diploma, or certificate program at the community college entity (specific campus or extension of the specific campus)for which the scholarship endowment fund is established, or at a branch campus or center of Utah State University for receipt of a scholarship from the University's UTAP endowment fund.

4.4.2. Be in the first term of the student's enrollment at the institution or be maintaining satisfactory progress, as defined by the institution, toward the degree, diploma, or certificate objective in which enrolled.

4.4.3. Meet all requirements of general eligibility for Federal Higher Education Act Part IV Student Financial Aid Programs, as defined in applicable U. S. Department of Education Regulations and the current edition of the Department of Education Student Aid Handbook.

4.4.4. Have a demonstrated need for financial assistance based on the defined Cost of Attendance for the applicable student category at the institution and the expected family contribution as determined by the Federal need analysis process for Higher Education Act Title IV student financial assistance programs.

4.5. Initial Allocation of Appropriated Funds - Money appropriated to the program for a specific fiscal year, plus any remaining balance at the end of the preceding fiscal year, shall be allocated to eligible institutions as follows:

4.5.1. Fifty percent of the amount available for allocation each fiscal year shall be allocated in equal proportions to:

4.5.1.1. Snow College, for its main campus and extensions;

4.5.1.2. Dixie College, for its main campus and extensions;

4.5.1.3. College of Eastern Utah, for its main campus and extensions of the main campus;

4.5.1.4. College of Eastern Utah, for its San Juan Campus and extensions of the San Juan Campus;

4.5.1.5. Utah Valley State College, for its main campus and extensions;

4.5.1.6. Salt Lake Community College, for its Taylorsville Campus and extensions of the Taylorsville Campus; and

4.5.1.7. Salt Lake Community College, for its South City Campus and extensions of the South City Campus.

4.5.2. Fifty percent of the amount available for allocation each fiscal year shall be allocated to the Utah State University for its instructional centers at Roosevelt, Blanding, Randolph, Price, Moab, Brigham City, Tooele, Richfield, and Ephraim, and such other centers as UHEAA may determine.

4.6. Submission of Proposals - For each of the individual entities listed in section 4.5, the institution may submit to UHEAA proposals for one-to-one matching grants from the funds allocated pursuant to section 4.5.

4.6.1. An institution may submit a proposal only when it has raised, from nonappropriated sources other than federal funds or reimbursed overhead funds, the one-to-one match for the amount of program moneys requested in the proposal.

4.6.2. The proposal shall include the following information, certifications, and stipulations:

4.6.2.1. The amount of the UTAP matching grant requested, and a certification that the institutional matching amount is available and has been raised from nonappropriated sources other than federal funds or reimbursed overhead funds;

4.6.2.2. A statement that if the requested program grant is approved, the institution will establish a specific restricted institutional endowment fund, separate and distinct from any foundation funds, for scholarships for students who meet the requirements enumerated in section 4.4.

4.6.2.3. A statement that money in the specified endowment fund shall be invested in compliance with rules of the State Money Management Council applicable to gift funds.

4.6.2.4. A statement that principal of the specified endowment fund will not be expended and that up to 50% of the money earned on principal in the endowment fund in a fiscal year may, at the institution's option, be retained and added to principal, but at least 50% of the money earned on principal in the endowment fund in a fiscal year will be used for scholarships for qualifying students with demonstrated financial need in the following fiscal year.

4.6.2.5. A statement that the institution agrees to maintain appropriate financial records, and records regarding the determination of scholarship awards to qualifying students, verifying its compliance with the terms stated in its proposal, and to make such records available upon request for review by UHEAA or State Board of Regents officers or auditors for a period of five years after the applicable transaction dates.

4.7. Three Year Reservation of Allocations and Reallocation of Allocations Not Used After Three Fiscal Years - Money allocated for a specific eligible entity in a fiscal year shall remain in reserve for proposals for the specific eligible entity for that fiscal year and two following fiscal years, and any money reserved for which the institution does not submit an eligible proposal by the end of the three-year period shall be returned to the pool of program money available for allocation for the following fiscal year.

4.8. Investment of Program Funds - Funds appropriated for the program shall be invested by UHEAA with the State Treasurer's Public Treasurer Investment Fund, and interest earned prior to disbursement for qualifying proposals shall be retained in the program fund and added to the pool available for allocation in the following fiscal year.

4.9. Disbursement of Funds for Qualifying Proposals - When a qualifying proposal is received pursuant to section 4.6, UHEAA shall promptly disburse the matching grant to the institution.

KEY: financial aid, higher education
January 4, 1999 **53B-7-501**
53B-7-502

R765. Regents (Board of), Administration.
R765-685. Utah Educational Savings Plan Trust.
R765-685-1. Purpose.

To provide rules for the administration and operation of the Utah Educational Savings Plan Trust established by Title 53B, Chapter 8a, of the Utah Code Annotated 1953.

R765-685-2. References.

2.1. Title 53B, Chapter 8a, Utah Code Annotated 1953

2.2. Title 67, Chapter 16, Utah Code Annotated 1953

2.3. Utah Administrative Code, R614-2. Investment of Funds of Member Institutions of the State System of Higher Education.

R765-685-3. Definitions.

Many terms used in this rule are defined in Section 53B-8a-102. In addition, the following terms are defined by this rule.

3.1. The term "academic period" shall mean one semester or one quarter or an equivalent period for a vocational technical institution.

3.2. The word "account" shall denote the account in the program fund established and maintained under the trust for a beneficiary.

3.3. The term "account balance" shall mean the fair market value of an account as of the accounting date.

3.4. The term "accounting date" shall mean the date, not later than the last business day of each quarter as determined by the program administrator.

3.5. The term "administrative fee" shall mean the fee charged by the trust on cancellation or for multiple substitution of beneficiaries.

3.6. The term "dependent person" shall mean a person who is unable to meet all of the criteria listed in subsection 3.8 of this rule.

3.7. The term "domicile" shall mean a person's true, fixed and permanent home. It is the place where the person intends to remain, and to which the person expects to return without intending to establish a new domicile elsewhere.

3.8. The term "independent person" shall mean a person who meets all of the following criteria. An independent person is one:

3.8.1. whose parent has not claimed such person as a dependent on federal or state income tax returns for the tax year preceding the date of a request to establish a vested participation agreement;

3.8.2. who demonstrates no financial dependence upon parent(s); and

3.8.3. whose parents' income is not taken into account by any private or governmental agency furnishing educational financial assistance to the person, including scholarships, loans, and other assistance.

3.9. "Notice to Delay Trust Benefits" shall mean the form which a participant submits to the program administrator of the trust to delay benefits under a participation agreement.

3.10. "Notice to Adjust Payments" shall mean the form which a participant submits to the program administrator of the trust to change the payment amount or payment schedule of the participation agreement.

3.11. "Request to Substitute Beneficiary" shall mean the form which a participant submits to the program administrator of the trust to request the substitution of a beneficiary.

3.12. "Notice to Terminate Agreement" shall mean the form which a participant submits to the program administrator of the trust to terminate a participation agreement under the trust.

3.13. "Notice to Use Trust Benefits" shall mean the form which a participant submits to the program administrator of the trust to notify the trust of the date benefits are to begin and level of benefits to be paid.

3.14. The term "parent" shall mean one of the following:

3.14.1. A person's father or mother; or

3.14.2. A court-appointed legal guardian. The term "parent" shall not apply if the guardianship has been established primarily for the purpose of conferring the status of resident on a person.

3.15. The word "payments" shall denote the money paid by the participant to the trust under the participation agreement.

3.16. The term "public treasurer" shall mean the Assistant Commissioner for Student Loan Finance who has the responsibility for the safekeeping and investment of all trust funds.

3.17. The term "qualified proprietary school approved by the board" shall mean a proprietary school which is fully accredited by a regional accrediting association or commission, the Accrediting Commission for Career Schools and Colleges of Technology, or the Accrediting Council for Independent Colleges and Schools, for which the student loan cohort default rate most recently published by the U.S. Department of Education is less than 20 percent, and which has not been placed on a reimbursement basis for financial aid programs by the U.S. Department of Education or under any limitation, suspension, or termination action or letter of credit requirement from the U.S. Department of Education or a guaranty agency under the Federal Family Education Loan Program.

R765-685-4. Participant Eligibility.

Purpose - Section 53B-8a-106 provides that the trust may enter into participation agreements with participants to effectuate the purposes, objectives and provisions of the trust. This rule establishes the eligibility criteria for a participant.

4.1. Participant Eligibility - A participant may be a resident of any state.

4.2. Participation Agreement - A participant shall execute a participation agreement with the program administrator that specifies the terms and conditions under which the participant shall participate in the trust.

4.3. Valid Social Security Number - A participant shall, on signing a participation agreement, provide the program administrator with his or her valid social security number.

R765-685-5. Beneficiary Eligibility.

Purpose - Section 53B-8a-106 provides that a beneficiary of a participation agreement may be designated from date of birth through age 16. This rule establishes the eligibility criteria for a beneficiary.

5.1. Beneficiary Eligibility - A beneficiary may be a resident of any state, who, on the day the participation agreement is executed, is younger than 17 years of age.

5.2. Proof of Age - A participant shall, on signing a participation agreement, provide the program administrator with proof of the beneficiary's age, in the form of a birth certificate or such other form as the program administrator may find acceptable.

5.3. Valid Social Security Number - A participant shall, on signing a participation agreement, provide the program administrator a valid social security number of the beneficiary.

R765-685-6. Payments and Payment Schedules.

Purpose - Section 53B-8a-106 states that participant agreements shall require participants to agree to invest a specific amount of money in the trust for a specific period of time for the benefit of a specific beneficiary, not to exceed $1,200 per beneficiary per year, adjusted annually to reflect increases in the Consumer Price Index. This rule provides for implementation of this provision.

6.1. Payment Schedule - A participant must specify a schedule for making payments according to a participation agreement. Acceptable payment schedules are, 1) weekly, 2) bi-weekly, 3) monthly, 4) annually, and 5) other.

6.2. Payment - A participant must specify a payment amount to be paid according to the payment schedule chosen by the participant. For participants who select a weekly, bi-weekly or monthly payment schedule, the specified payment amount must be at least twenty-five dollars. For participants who select an annual payment schedule, the specified payment amount must be at least three hundred dollars. For participants who select other payment schedule, the specified payment amount must equate to at least three hundred dollars per year. A payment of less than twenty-five dollars shall be returned to the participant.

6.3. Maximum Annual Payments - The total of all payments made on behalf of a beneficiary in one calendar year may not exceed $1,200, adjusted annually for inflation. Payments in excess of this maximum shall be returned to the participant.

6.4. Annual Adjustments - Annual adjustments to the maximum amount of payments allowable under a participation agreement in a given calendar year shall be published by the program administrator prior to the beginning of that year.

6.5. Amendments - Payment amounts and payment schedules may be adjusted by submitting to the program administrator notice to adjust payments. No administrative fee will be charged to participants for such adjustments.

R765-685-7. Substitution of Beneficiary.

Purpose - Section 53B-8a-106 provides that beneficiaries may be changed subject to the rules and regulations of the board. This rule establishes the criteria for substituting one beneficiary for another.

7.1. Substitution - A participant may substitute a beneficiary at any time prior to the date of admission of any beneficiary of a participation agreement to an institution of higher education. The substitute beneficiary must be eligible for participation pursuant to section 5 of this rule, and be a member of the family of the beneficiary being substituted as defined in subsection 7.1.1 of this rule.

7.1.1. Member of Family - An individual shall be considered a member of a beneficiary's family only if such individual is:

7.1.1.1. an ancestor of such beneficiary

7.1.1.2. a spouse of such beneficiary

7.1.1.3. a lineal descendant of such beneficiary, of such beneficiary's spouse, or of a parent of such, or

7.1.1.4. the spouse of any lineal descendant described in subsection 7.1.1.3.

7.1.1.5. For purposes of the preceding sentence, a legal adoption shall be considered as though it establishes a blood relationship between an adopted child and parent.

7.2. Request - A participant may request that a beneficiary be substituted by submitting to the program administrator a request to substitute beneficiary. The request shall accompany evidence, as specified by the program administrator, that the proposed substitute beneficiary is a member of the family of the beneficiary.

7.4. Administrative Fee - No administrative fee shall be charged for the first two substitutions of beneficiary. If a participant substitutes a beneficiary under a participation agreement more than twice, the trust shall require the participant to pay an administrative fee of twenty-five dollars for each subsequent substitution.

R765-685-8. Cancellation and Payment of Refunds.

Purpose - Section 53B-8a-108 provides that any participant may cancel a participation agreement at will. This rule establishes the criteria for canceling participation agreements and providing refunds.

8.1. Cancellation - A participant may at any time cancel a participation agreement, without cause, by submitting to the program administrator notice to terminate agreement.

8.2. Payment of Refund - If the participation agreement is canceled, the participant is entitled to a refund. The refund shall be mailed or otherwise sent to the participant within sixty days after receipt by the program administrator of notice to terminate the participation agreement. The amount of the refund shall be determined according to the following criteria.

8.2.1. If the participation agreement was in effect for less than two years the participant shall receive one-hundred percent of all payments made under the participation agreement less any amount paid by the trust for educational expenses of the beneficiary. Investment income credited to the participant's account shall be forfeited.

8.2.2. If the participation agreement was in effect for two or more years the participant shall receive one-hundred percent of all payments made under the participation agreement plus all investment income which has been credited to the participant's account less any amount paid by the trust for educational expenses of the beneficiary and less an administrative fee equal to the lesser of, 1) fifty dollars, or 2) one-half of the investment income credited to the participant's account.

8.3. Death or Disability of the Beneficiary - Upon the occurrence of, 1) death of the beneficiary, or 2) permanent disability or mental incapacity of the beneficiary, the participant is entitled to a refund of one-hundred percent of all payments made under the participation agreement plus all investment income which has been credited to the participant's account less any amount paid by the trust for educational expenses of the beneficiary. Under such circumstances, no administrative fee

shall be charged.

8.3.1. Before a cancellation and refund due to the death of a beneficiary is made, a participant must provide the trust a copy of the beneficiary's death certificate or other proof of death acceptable under state law.

8.3.2. Before a cancellation and refund due to the disability or mental incapacity of a beneficiary is made, a participant must provide to the trust written certification from a qualified and licensed physician that the beneficiary cannot reasonably attend school.

8.4. Refunds Reported - Funds that are refunded to a participant pursuant to this section shall be reported to the appropriate taxing authorities for the tax year in which such refund is made.

R765-685-9. Vested Participation Agreement.

Purpose - Section 53B-8a-106 provides that the beneficiary of a vested participation agreement shall be considered a Utah resident for tuition purposes. This rule establishes the criteria for determining whether a participation agreement has vested.

9.1. Residency Requirement - An individual who has at any time been a resident of the State of Utah for at least eight continuous years and was designated as a beneficiary under a participation agreement for that entire eight year period, shall be deemed to have a vested participation agreement, even if the beneficiary leaves the state prior to enrollment in an institution of higher education.

9.2. Proof of Residency - At any time following the expiration of the period of eight years of continuous residency by the beneficiary, either the participant or the beneficiary may submit to the program administrator evidence of the residency for the purpose of establishing the vested participation agreement.

9.2.1. Evidence submitted on behalf of a dependent person shall pertain to the domicile of either parent during the claimed period of residency. Evidence submitted on behalf of an independent person shall pertain to the domicile of such person during the claimed period of residency.

9.2.2. The determination of residency shall be based upon verifiable circumstances or actions. No single fact is paramount, and each situation shall be evaluated to identify those facts which are essential to the determination of domicile.

9.2.3. The following facts, although not conclusive shall have probative value in support of a claim for resident classification.

9.2.3.1. Full-time employment in Utah or transfer to an employer in contiguous area while maintaining domicile in Utah.

9.2.3.2. Filing of Utah resident income tax return for each applicable calendar year of claimed residency status.

9.2.3.3. Attendance as a full-time, nonresident student at an out-of-state institution of higher education while determined to be a resident of Utah.

9.2.3.4. Abandonment of a former domicile and establishing domicile in Utah with attendance at an institution of higher education following and only incidental to such change in domicile.

9.2.3.5. Payment of occupational taxes in Utah.

9.2.3.6. Payment of real property taxes in Utah.

9.2.3.7. Payment of intangible personal property taxes in Utah.

9.2.3.8. Ownership of real property in Utah, if the property was used as a residence during the claimed period of residency.

9.2.3.9. Long-term lease of housing during the claimed period of residency.

9.2.3.10. Utah automobile registration during the claimed period of residency.

9.2.3.11. Utah driver's license during the claimed period of residency.

9.2.3.12. Registration as a Utah voter during the claimed period of residency.

9.2.3.13. Corroborating affidavit of a non relative.

9.2.4. The determination of residency shall be based upon verifiable circumstances or actions and authenticated copies of relevant documentation. The program administrator may request additional documentation to clarify circumstances and formulate a decision that considers all relevant facts.

9.3. Non transferability - Although the participant may freely substitute beneficiaries under a participation agreement, the residency status acquired by a beneficiary of a vested participation agreement shall not be used to confer such status on a substitute beneficiary, nor shall the residency of one beneficiary be taken into account in the establishment of a vestment period of substitute beneficiary.

R765-685-10. Payment of Benefits.

Purpose - Section 53B-8a-106 provides that payment of benefits provided under participation agreements must begin not later than the first full academic quarter or semester at an institution of higher education following the beneficiary's 22nd birthday or high school graduation, which ever is later, unless the participant notifies the program administrator to the contrary. This rule establishes the procedures for the payment of benefits.

10.1. Distribution of Benefits - For payment of benefits from the trust to begin, the participant shall submit a notice to use trust benefits.

10.2. Delay of Distribution - For payment of benefits to be delayed beyond four months after the beneficiary's 22nd birthday, the participant must submit a notice to delay trust benefits. If no such notice is submitted, the program administrator shall refund money held by the trust on behalf of the participant according to section 8 of this rule.

10.3. Limit on Delay of Distribution - Participants may delay the distribution of trust benefits until the beneficiary's 27th birthday. If the participant does not submit a notice to use trust benefits on or before beneficiary's 27th birthday, the program administrator shall refund money held by the trust on behalf of the participant according to section 8 of this rule.

10.3.1. Upon appeal from a participant, the program administrator may waive the age limit identified in subsection 10.3 of this rule if, in the judgement of the program administrator, the probability that the beneficiary will attend a higher education institution in the near future is significant. Under no circumstances will the payment of benefits be delayed beyond a beneficiary's 35th birthday.

10.4. Payout Schedule - Upon submission of a notice to use trust benefits, the participant shall specify the level of

benefits to be paid. The participant may elect distribution of an allotment of the account balance, calculated by dividing the account balance by the number of academic periods in the beneficiary's program of study, or a higher amount, which shall not exceed the beneficiary's higher education costs for each academic period. The participant may adjust the level of benefits paid in any academic period by notifying the program administrator in writing.

10.5. Duration of Payout - Distribution of benefits shall begin after receipt by the program administrator of notice to use trust benefits and shall continue throughout the beneficiary's period of enrollment at an institution of higher education or until the account balance has been exhausted, whichever occurs first.

10.6. Interruption in Attendance - If following the submission of a notice to use trust benefits, the beneficiary interrupts his or her attendance at an institution of higher education, the participant shall submit a notice to delay trust benefits specifying the period for which trust benefits shall be delayed.

10.7. Unused Benefits - If the beneficiary graduates from an institution of higher education, and a balance remains in the beneficiary's account, the program administrator shall refund the balance of the payments and the earnings from the investments in the program fund remaining in the account to the participant. The program administrator shall make the payment from the program fund within sixty days from the date of the beneficiary's graduation. The refund shall be made unless the beneficiary plans to continue at a higher education institution and the participant submits a completed notice to delay benefits or notice to use trust benefits.

10.8. Refunds Reported - Funds that are refunded to a participant pursuant to this section shall be reported to the appropriate taxing authorities for the tax year in which such refund is made.

R765-685-11. Higher Education Costs.

Purpose - Section 53B-8a-101 authorizes the establishment of the Utah Educational Savings Plan Trust to encourage individuals to save for future higher education costs. This rule established the definition of higher education costs.

11.1. Definition - The term "higher education costs" shall mean charges for tuition, fees, books, supplies and equipment required for enrollment or attendance of a designated beneficiary at an institution of higher education.

11.2. Payment of Benefits - The payment of benefits pursuant to subsection 10 of this rule may be made only for higher education costs as defined in subsection 11.1.

R765-685-12. Investment Policy.

Purpose - This rule is applicable to all investments by the Utah Educational Savings Plan Trust and to Trustees for funds covered by Trust agreements.

12.1. Investment Objectives - The primary objectives, in priority order, of investment activities shall be:

12.1.1. to provide compliance with the State Money Management Act and related Rules.

12.1.2. to provide adequate liquidity levels to meet Trust obligations.

12.1.3. to provide guidelines as to the types and maturities of investments while considering: (a) the availability of funds to cover current needs; (b) maximum yields on investments of funds, and (c) minimum exposure to risk of loss.

12.1.4. All fixed income investments will be suitable to be held to maturity; however, sale prior to maturity may be necessary and warranted in some cases. The Trust's investment portfolio will not be used for speculative purposes.

12.1.5. The public treasurer will consider and meet the following objectives when investing Trust funds:

12.1.5.1. safety of principal;

12.1.5.2. need for liquidity;

12.1.5.3. yield on investments;

12.1.5.4. recognition of the different investment objectives of Program, Endowment and Administrative Funds; and

12.1.5.5. maturity of investments, so that the maturity date of the investment does not exceed the anticipated date of the expenditure of funds.

12.2. Standards of Care - Standards of care include:

12.2.1. Prudence - Selection of investments as authorized by this policy shall be made with the exercise of that degree of judgment and care, under circumstances then prevailing, which a person of prudence, discretion, and intelligence would exercise in the management of his or her own affairs, not for speculation but for investment, considering the probable safety of capital, as well as the probable benefits to be derived and the probable duration for which such investment may be made, and considering the investment objectives specified in this policy.

12.2.2. Ethics and Conflicts of Interest - Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions. Employees and investment officials shall disclose any personal financial or investment positions that could be related to the performance of the investment in accordance with Utah Code Annotated 67-16-1, Utah Public Officer's and Employees' Ethics Act.

12.2.3. Delegation of Authority - Authority to manage the investment program is granted to the Trust's public treasurer who is responsible for the operation of the investment program and who shall carry out established written procedures and internal controls for the operation of the investment program consistent with this investment policy.

12.3. Safekeeping and Custody - Standards of safekeeping and custody shall include:

12.3.1. Internal Controls - The public treasurer is responsible for establishing and maintaining an internal control structure designed to ensure that the assets of the Trust are protected from loss, theft or misuse. The internal control structure shall be designed to provide reasonable assurance that these objectives are met.

12.3.1.1. Accordingly, the public treasurer shall establish a process for an annual independent review as provided by the state auditor to assure compliance with policies and procedures.

12.3.2. Custody -

12.3.2.1. The public treasurer shall have custody of all securities purchased or held and all evidence of deposits and investments of all funds. All securities shall be delivered versus

payment to the public treasurer or to the treasurer's safekeeping bank.

12.3.2.2. The public treasurer may deposit any of these securities with a bank or trust company to be held in safekeeping by that custodian.

12.3.2.3. The provisions of this subsection apply to any book-entry-only security the ownership records of which are maintained with a securities depository, in the Federal Book Entry system authorized by the U.S. Department of Treasury, or in the book-entry records of the issuer, as follows:

12.3.2.3.1. the direct ownership of the security by the public treasurer shall be reflected in the book-entry records and represented by a receipt, confirmation, or statement issued to the public treasurer by the custodian of the book-entry system; or

12.3.2.3.2. the ownership of the security held by the public treasurer's custodial bank or trust company shall be reflected in the book-entry records and the public treasurer's ownership shall be represented by a receipt, confirmation, or statement issued by the custodial bank or trust company.

12.3.3. All investments shall be approved by the State Treasurer.

12.4. Authorized Investments - Investment transactions may be conducted only through qualified depositories, certified dealers, or directly with the issuers of the investment securities. The remaining term to maturity of investments may not exceed the period of availability of the funds to be invested. Deposits into the Trust's Administrative Fund and Program Fund may be invested only in the following assets that meet the Trust's investment objectives and criteria and the requirements of the State Money Management Act as amended:

12.4.1. negotiable or nonnegotiable deposits of qualified depositories;

12.4.2. qualifying repurchase agreements and reverse repurchase agreements with certified dealers, permitted depositories, or qualified depositories using collateral consisting of:

12.4.2.1. Government National Mortgage Association mortgage pools;

12.4.2.2. Federal Home Loan Mortgage Corporation mortgage pools;

12.4.2.3. Federal National Mortgage Corporation mortgage pools;

12.4.2.4. Small Business Administration loan pools;

12.4.2.5. Federal Agriculture Mortgage Corporation pools; or

12.4.2.6. other deposits or investments of public funds authorized by the State Money Management Act;

12.4.3. commercial paper that is classified as "first tier" by two nationally recognized statistical rating organizations, one of which must be Moody's Investors Service, Inc. or Standard and Poor's Corporation, which has a remaining term to maturity of 270 days or less;

12.4.4. bankers' acceptances that;

12.4.4.1. are eligible for discount at a Federal Reserve bank; and

12.4.4.2. have a remaining term to maturity of 270 days or less;

12.4.5. fixed rate negotiable deposits issued by a permitted depository that have a remaining term to maturity of 365 days or less;

12.4.6. obligations of the United States Treasury, including United Sates Treasury bills, United States Treasury notes, and United States Treasury bonds;

12.4.7. obligations other than mortgage pools and other mortgage derivative products issued by, or fully guaranteed as to principal and interest by, the following agencies or instrumentalities of the United States in which a market is made by a primary reporting government securities dealer:

12.4.7.1. Federal Farm Credit banks;

12.4.7.2. Federal Home Loan banks;

12.4.7.3. Federal National Mortgage Association;

12.4.7.4. Student Loan Marketing Association;

12.4.7.5. Federal Home Loan Mortgage Corporation;

12.4.7.6. Federal Agriculture Mortgage Corporation; and

12.4.7.7. Tennessee Valley Authority;

12.4.8. fixed rate corporate obligations that;

12.4.8.1. are rated "A" or higher or the equivalent of "A" or higher, by two nationally recognized statistical rating organizations one of which must be Moody's Investors Service, Inc. or Standard and Poor's Corporation;

12.4.8.2. are publicly traded; and

12.4.8.3. have a remaining term to final maturity of 365 days or less or is subject to a hard put at par value or better, within 365 days;

12.4.9. tax anticipation and general obligation bonds of the state or of any county, incorporated city or town, school district, or other political subdivision of this state, including bonds offered on a when-issued basis.

12.4.10. bonds, notes, or other evidence of indebtedness of any county, incorporated city or town, school district, or other political subdivision of the state that are payable from assessments or from revenues or earnings specifically pledged for payment of the principal and interest on these obligations.

12.4.11. State Public Treasurer's Investment Fund;

12.4.12. shares or certificates in a money market mutual fund as defined in Section 51-7-3, et.seq., of the State Money Management Act;

12.4.13. variable rate negotiable deposits that:

12.4.13.1. are issued by a qualified depositor or a permitted depository;

12.4.13.2. are repriced at least semiannually; and

12.4.13.3. have a remaining term to final maturity not to exceed two years;

12.4.14. variable rate securities that:

12.4.14.1. are rated "A" or higher or the equivalent of "A" or higher by two nationally recognized statistical rating organizations, one of which must be Moody's Investors Service, Inc. or Standard and Poor's Corporation;

12.4.14.2. are publicly traded;

12.4.14.3. are repriced at least semiannually;

12.4.14.4. have a remaining term to final maturity not to exceed two years; or are subject to a hard put at par value or better, within 365 days; and

12.4.14.5. are not mortgages, mortgage-backed securities, mortgage derivative products, or any security making unscheduled periodic principal payments other than optional redemptions.

12.4.15. Deposits into the Trust's Endowment Fund may

be invested in any of the following:

12.4.15.1. any deposit or investment authorized for the Trust's Administrative Fund or Program Fund; and

12.4.15.2. investments as described and set forth in the State Money Management Council Rule 2: Investment of Funds of Member Institutions of the State System of Higher Education. (Utah Administrative Code, R614-2.)

12.5. Reporting - The public treasurer will prepare monthly and quarterly investment reports with appropriate assertions which will be submitted to the Utah State Board of Regents Student Finance Subcommittee for review and approval. The Subcommittee will determine the format and information to be reported.

R765-685-13. Earnings in Program Fund.

Purpose - Section 53B-8a-107 provides the Trust with authority to invest, via the program fund, payments made by a participant under a participation agreement. This rule establishes the terms for the payment of interest to individual participant accounts within the program fund.

13.1. Quarterly Crediting - The trust shall credit interest earnings from the program fund to individual participant accounts on a quarterly basis.

13.2. Pro-rata Share - A pro-rata share of interest earned by the program fund during a given quarter shall be credited to each participant account at the end of the quarter. The pro-rata amount posted to each individual account shall be based on the average daily balance of the individual account compared to the average daily balance of the program fund during the quarter.

13.3. Transfers to Administrative Fund - Upon approval of the board, up to .5 percentage points of interest earned annually in the program fund may be transferred to the administrative fund for administrative purposes.

13.4. Quarterly Statement - At the close of each quarter, the Trust shall provide for each participant a statement listing the beginning balance, interest earned and closing balance of the participant's account held in the program fund.

R765-685-14. Earnings in Endowment Fund.

Purpose - Section 53B-8a-107 provides that each beneficiary for whom funds are saved under a participation agreement shall receive an interest in a portion of the investment income of the endowment fund of the Trust. This rule provides for implementation of this provision.

14.1. Transfers to Administrative Fund - Upon approval of the board, up to two percentage points of interest earned annually in the endowment fund may be transferred to the administrative fund for administrative purposes.

14.2. Earmarking of Endowment Interest - A portion of the interest earned by the endowment fund that is not transferred to the administrative fund shall be earmarked for use by the beneficiary of each participation agreement.

14.3. Pro-rata Share - Each quarter, a pro-rata amount of endowment fund interest shall be earmarked to each participant account. The pro-rata amount shall be based on the average daily balance of account held on behalf of a beneficiary in the program fund compared to the average daily balance of the entire program fund during the quarter up to an amount equal to .25 percent of the amount saved on behalf of the beneficiary in such account.

14.4 The earmarking of endowment interest for use by a beneficiary shall not constitute ownership of such interest on the part of any beneficiary or participant. Upon cancellation of a participation agreement, endowment interest earmarked to an account shall revert back to the endowment fund.

14.5 Reinvestment of Endowment Interest - Endowment Interest that is not either transferred to the administrative fund or earmarked for use by a beneficiary under a program agreement shall be reinvested in the endowment fund.

14.6. Quarterly Disclosure - The quarterly statement provided to each participant by the Trust shall disclose both the quarterly and cumulative amounts of endowment interest that have been earmarked for use by a beneficiary under a participation agreement.

14.7. Payment of Benefits - When payment of benefits for the beneficiary begin under a participation agreement, interest from the endowment fund that has been earmarked for use by the beneficiary shall be made available for higher education costs, and shall be disbursed with the principal and interest held on behalf of the beneficiary in the program fund according to section 10 of this rule.

R765-685-15. No Pledging of Trust Funds as Security.

15.1. Funds held by the Utah Educational Savings Plan Trust may not be used by a participant or a beneficiary under a participation agreement as security for a loan.

KEY: higher education, educational savings trust
January 4, 1999 53B-8a

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. "Asset value" means the value arrived at using generally accepted cost approaches to value.

3. "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.

4. "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.

5. "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.

6. "Economic production" means the ability of the mining property to profitably produce and sell product, even if that ability is not being utilized.

7. "Exempt royalties" means royalties paid to this state or its political subdivisions, an agency of the federal government, or an Indian tribe.

8. "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.

9. "Fair market value" is as defined in Section 59-2-102.

10. "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.

11. "Implied point of sale" means the point where the minerals or finished product change hands in the normal course of business.

12. "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.

13. "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.

14. "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.

15. "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.

16. "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.

17. "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.

18. "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.

19. "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. When the fair market value of a productive mining property in more than one tax area exceeds the asset value, the fair market value will be divided into two components and apportioned as follows:

1. Asset value that includes machinery and equipment, improvements, and land surface values will be apportioned to the tax areas where the assets are located.

2. The fair market value less the asset value will give an income increment of value. The income increment will be apportioned as follows:

a) Divide the asset value by the fair market value to determine a quotient. Multiply the quotient by the income increment of value. This value will be apportioned to each tax area based on the percentage of the total asset value in that tax area.

b) The remainder of the income increment will be apportioned to the tax areas based on the percentage of the known mineral reserves according to the mine plan.

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. An assessor, county employee, or state employee must hold the appropriate designation listed below to gain the authority to value property for ad valorem taxation purposes.

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 locally assessed 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 locally assessed 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 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.

J. All appraisal work performed by Tax Commission designated appraisers shall meet the current requirements of the Uniform Standards of Professional Appraisal Practice (USPAP) as promulgated by the Appraisal Foundation.

K. If appropriate Tax Commission designations are not held by assessor's office personnel, the appraisal work must be contracted out to qualified private appraisers. An assessor's office may elect to contract out appraisal work to qualified private appraisers even if personnel with the appropriate designation are available in the office. If appraisal work is contracted out, the following requirements must be met.

1. The private sector appraisers contracting the work must hold the State Certified Residential Appraiser or State Certified General Appraiser license issued by the Division of Real Estate of the Utah Department of Commerce. Only appraisers with the State Certified General Appraiser license may appraise nonresidential properties.

2. All appraisal work shall meet the current requirements of USPAP.

L. The completion and delivery of the assessment roll required under Section 59-2-311 is an administrative function of the elected assessor.

1. There are no specific registration or educational requirements related to this function.

2. An elected assessor may complete and deliver the assessment roll as long as the valuations and appraisals included in the assessment roll were completed by persons having the required designations.

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-22.

2. The Notice of Property Valuation and Tax Changes, however modified, must contain the same information as the unmodified version. A property 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.

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. Actual 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. Net annexation value is the taxable value for the current year adjusted for redevelopment of all properties annexed into an entity during the previous calendar year minus the taxable value for the previous year adjusted for redevelopment for all properties annexed out of the entity during the previous calendar year.

3. New growth is equal to zero for an entity with:

a) an actual new growth value less than zero; and

b) a net annexation value greater than or equal to zero.

4. New growth is equal to actual new growth for:

a) an entity with an actual new growth value greater than or equal to zero; or

b) an entity with:

i) an actual new growth value less than zero; and

ii) the actual new growth value is greater than or equal to the net annexation value.

5. New growth is equal to the net annexation value for an entity with:

a) a net annexation value less than zero; and

b) the actual new growth value is less than the net annexation value.

6. 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, roll-back 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. 1999 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 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
98	70%
97	40%
96 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
98	87%
97	72%
96	60%
95	53%
94	46%
93	37%
92	27%
91 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
98	83%
97	67%

96	51%
95	35%
94 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
98	88%
97	79%
96	68%
95	58%
94	48%
93	37%
92	25%
91 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
98	90%
97	81%
96	72%
95	63%
94	54%
93	45%
92	34%
91	23%
90 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 1999 percent good applies to 1999 models purchased in 1998.

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
99	90%
98	68%
97	63%
96	58%
95	53%
94	49%
93	44%
92	39%
91	34%
90	30%
89	25%
88	20%
87	15%
86 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
98	91%
97	84%
96	77%
95	70%
94	64%
93	56%
92	47%
91	38%
90	29%
89	20%
88 and prior	10%

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) processing equipment;
(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
98	91%
97	84%
96	77%
95	70%
94	64%
93	56%
92	47%
91	38%
90	29%
89	20%
88 and prior	10%

9. Class 9 - Off-Highway 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 1999 percent good applies to 1999 models purchased in 1998.

d) Off-Highway Vehicles have a minimum value of $500 and a minimum tax of $7.50.

TABLE 9

Year of Model	Percent Good of Cost New
99	90%
98	61%
97	58%
96	55%
95	52%
94	49%
93	45%
92	42%
91	39%
90	36%
89	33%
88	30%
87	27%
86 and prior	23%

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
98	93%
97	88%
96	82%
95	77%
94	73%
93	67%
92	60%
91	53%
90	46%
89	40%
88	33%
87	26%
86	18%
85 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 1999 percent good applies to 1999 models purchased in 1998.

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
99	90%
98	72%
97	69%
96	67%
95	64%
94	61%
93	59%
92	56%
91	53%
90	50%
89	48%
88	45%
87	42%
86	40%
85	37%
84	34%
83 and prior	31%

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
98	85%
97	57%
96	36%
95	23%
94	14%
93 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) 1999 model equipment purchased in 1998 is valued at 100 percent of acquisition cost.

TABLE 13

Year of Acquisition	Percent Good of Acquisition Cost
98	64%
97	61%
96	57%
95	54%
94	51%
93	48%
92	44%
91	41%
90	38%
89	35%
88	31%
87	28%
86	25%
85 and prior	22%

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 1999 percent good applies to 1999 models purchased in 1998.

TABLE 14

Year of Model	Percent Good of Cost New
99	90%
98	72%
97	69%
96	65%
95	62%
94	58%
93	54%
92	51%
91	47%
90	44%
89	40%
88	37%
87	33%
86	30%
85	26%
84	22%
83 and prior	19%

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
98	74%
97	54%
96	38%
95	24%
94 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
98	95%
97	91%
96	87%
95	84%
94	82%
93	78%
92	74%
91	68%
90	64%
89	60%
88	57%
87	52%
86	47%
85	40%
84	34%
83	28%
82	21%
81	15%
80 and prior	8%

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 1999 percent good applies to 1999 models purchased in 1998.

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
99	90%
98	69%
97	67%
96	64%
95	62%
94	60%
93	57%
92	55%
91	53%
90	50%
89	48%
88	46%
87	43%
86	41%
85	39%
84	36%
83	34%
82	31%
81	29%
80	27%
79 and prior	24%

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 1999 percent good applies to 1999 models purchased in 1998.

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
99	90%
98	69%
97	66%
96	63%
95	59%
94	56%
93	52%
92	49%
91	45%
90	42%
89	39%
88	35%
87	32%
86	28%
85	25%
84	21%
83 and prior	18%

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
98	92%
97	87%
96	81%
95	76%
94	70%
93	63%
92	56%
91	48%
90	41%
89	34%
88	27%
87	18%
86 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 1999 percent good applies to 1999 models purchased in 1998.

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

99	95%
98	75%
97	71%
96	67%
95	63%
94	60%
93	56%
92	52%
91	48%
90	44%
89	40%
88	36%
87	32%
86	28%
85	24%
84	20%
83 and prior	16%

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) Because Section 59-2-405.1 subjects Class 22 property to an age-based uniform fee, a percent good schedule is not necessary for this class.

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
98	75%
97	71%
96	67%
95	63%
94	59%
93	55%
92	51%
91	47%
90	43%
89	39%
88	35%
87 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
98	94%
97	88%
96	82%
95	77%
94	71%
93	65%
92	59%
91	54%
90	48%
89	42%
88	36%
87 and prior	30%

F. The provision of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

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-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" means the location where domicile has been established.

C. Except as provided in D. and F.3., 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.

F. Administration of the Residential Exemption.

1. Except as provided in F.2. and F.4., the first one acre of land per residential unit shall receive the residential exemption.

2. If a parcel has high density multiple residential units, such as an apartment complex or a mobile home park, the amount of land, up to the first one acre per residential unit, eligible to receive the residential exemption shall be determined by the use of the land. Land actively used for residential purposes qualifies for the exemption.

3. If the county assessor determines that a property under construction will qualify as a primary residence upon completion, the property shall qualify for the residential exemption while under construction.

4. A property assessed under the Farmland Assessment Act shall receive the residential exemption only for the homesite.

5. A property with multiple uses, such as residential and commercial, shall receive the residential exemption only for the percentage of the property that is used as a primary residence.

6. If the county assessor determines that an unoccupied property will qualify as a primary residence when it is occupied, the property shall qualify for the residential exemption while unoccupied.

R884-24P-53. 1999 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	700
2)	Cache	625
3)	Carbon	550
4)	Davis	725
5)	Emery	450
6)	Iron	675
7)	Kane	400
8)	Millard	700
9)	Salt Lake	650
10)	Utah	650
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	600
2)	Cache	525
3)	Carbon	450
4)	Davis	625
5)	Duchesne	475
6)	Emery	350
7)	Grand	375
8)	Iron	575
9)	Juab	425
10)	Kane	300
11)	Millard	600
12)	Salt Lake	500
13)	Sanpete	475
14)	Sevier	525
15)	Summit	450
16)	Tooele	425
17)	Utah	550
18)	Wasatch	450
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	425
2)	Box Elder	450
3)	Cache	375
4)	Carbon	300
5)	Davis	475
6)	Duchesne	325
7)	Emery	200
8)	Garfield	150
9)	Grand	225
10)	Iron	425
11)	Juab	275
12)	Kane	150
13)	Millard	450
14)	Morgan	375
15)	Piute	350
16)	Rich	225
17)	Salt Lake	350
18)	San Juan	175
19)	Sanpete	325
20)	Sevier	375
21)	Summit	300
22)	Tooele	400
23)	Uintah	350
24)	Utah	400
25)	Wasatch	300
26)	Washington	
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 commission's sales tax 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 model, econometric model, or simple average, based upon the availability of and variation in the 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.

R884-24P-60. Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1.

A. For purposes of Section 59-2-405.1, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

B. The uniform fee established in Section 59-2-405.1 is levied against motor vehicles and state-assessed commercial vehicles classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33.

C. Personal property subject to the uniform fee imposed in Section 59-2-405 is not subject to the Section 59-2-405.1 uniform fee.

D. The following classes of personal property are not subject to the Section 59-2-405.1 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. mobile and manufactured homes;

5. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles or state-assessed commercial vehicles.

E. The age of a motor vehicle or state-assessed commercial vehicle, for purposes of Section 59-2-401.5, shall be determined by subtracting the vehicle model year from the current calendar year.

F. The only Section 59-2-405.1 uniform fee due upon registration or renewal of registration is the uniform fee calculated based on the current calendar year.

G. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed motor vehicles that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of motor vehicles registered in Utah and subject to Section 59-2-405.1 to determine the value of motor vehicles that may be subtracted from the allocated unit value.

H. The motor vehicle of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405.1 uniform fee.

I. A motor vehicle belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405.1 uniform fee at the time of registration or renewal of registration as long as the motor vehicle is kept in the other state.

J. The situs of a motor vehicle or state-assessed commercial vehicle subject to the Section 59-2-405.1 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased motor vehicles or state-assessed commercial vehicles shall be the tax area of the purchaser's domicile, unless the motor vehicle or state-assessed commercial vehicle will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers a motor vehicle or state-assessed commercial vehicle that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the vehicle is kept in that county to the assessor of the county in which the vehicle 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.

2. If the owner of a motor vehicle or state-assessed commercial vehicle registered in Utah is domiciled outside of Utah, the taxable situs of the vehicle 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 information indicating all motor vehicles and state-assessed commercial vehicles subject to state registration and their corresponding taxable situs.

4. Section 59-2-405.1 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405.1 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405.1 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is not applicable to the Section 59-2-405.1 uniform fee.

M. The value of motor vehicles and state-assessed commercial vehicles to be considered part of the tax base for purposes of determining debt limitations pursuant to Article XIII, Section 14 of the Utah Constitution, shall be determined by dividing the Section 59-2-405.1 uniform fee collected by .015.

N. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-61. 1.5 Percent 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. Definitions.

1. For purposes of Section 59-2-405, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

2. "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, which is either self-propelled or pulled by another vehicle.

a) Recreational vehicle includes a travel trailer, a camping trailer, a motor home, and a fifth wheel trailer.

b) Recreational vehicle does not include a van.

B. The uniform fee established in Section 59-2-405 is levied against the following types of personal property, unless specifically excluded by Section 59-2-405:

1. motor vehicles that are not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33;

2. watercraft required to be registered with the state;

3. recreational vehicles required to be registered with the state; and

4. all other tangible personal property required to be registered with the state before it is used on a public highway, on a public waterway, on public land, or in the air.

C. The following classes of personal property are not subject to the Section 59-2-405 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles.

D. The fair market value of tangible personal property subject to the Section 59-2-405 uniform fee is based on depreciated cost new as established in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules," published annually by the Tax Commission.

E. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed personal property that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of personal property registered in Utah and subject to Section 59-2-405 to determine the value of personal property that may be subtracted from the allocated unit value.

F. 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.

G. The county assessor may change the fair market value of any individual item of personal property in his jurisdiction for any of the following reasons:

1. The manufacturer's suggested retail price ("MSRP") or the cost new was not included on the state printout, computer tape, or registration card;

2. The MSRP or cost new listed on the state records was inaccurate; or

3. In the assessor's judgment, an MSRP or cost new adjustment made as a result of a property owner's informal request will continue year to year on a percentage basis.

H. If the personal property is of a type subject to annual registration, the Section 59-2-405 uniform fee is due at the time the registration is due. If the personal property is not registered during the year, the owner remains liable for payment of the Section 59-2-405 uniform fee to the county assessor.

1. No additional uniform fee may be levied upon personal property transferred during a calendar year if the Section 59-2-405 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 Section 59-2-405 uniform fee shall be due annually.

3. The personal property of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405 uniform fee.

4. Personal property belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405 uniform fee as long as the personal property is kept in another state.

5. Noncommercial trailers weighing 750 pounds or less are not subject to the Section 59-2-405 uniform fee or ad valorem property tax but may be registered at the request of the owner.

I. If the personal property is of a type subject to annual registration, registration of that personal property may not be completed unless the Section 59-2-405 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.

J. The situs of personal property subject to the Section 59-2-405 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased personal property shall be the tax area of the purchaser's domicile, unless the personal property will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. 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.

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 information indicating all personal property subject to state registration and its corresponding taxable situs.

4. Section 59-2-405 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the

Commission.

5. Section 59-2-405 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is not applicable to the Section 59-2-405 uniform fee.

M. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-62. Valuation of State Assessed Utility and Transportation Properties Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions:

1. "Attributes" of property include all defining characteristics inseparable from real property and tangible personal property, such as size, location and other attributes inherent in the property itself.

2. "Cost regulated utility" means any public utility assessable by the Commission pursuant to Section 59-2-201, whose allowed rates are determined by a state or federal regulatory commission by reference to a rate of return applied to rate base where the rate of return and rate base are set by the regulatory body.

3. "Depreciation" is the loss in value from any cause. There are two distinct types of depreciation encountered in the appraisal of properties subject to this rule: accounting depreciation and appraisal depreciation. Accounting depreciation is often called "book depreciation" and is generally calculated in accordance with generally accepted accounting principles or regulatory guidelines. Appraisal depreciation is the total loss in property value from any cause. There are three recognized types of appraisal depreciation: physical deterioration, functional obsolescence and external obsolescence. Physical deterioration is the physical wearing out of the property evidenced by wear and tear, decay and structural defects. Physical deterioration includes the loss in value due to normal aging. Functional obsolescence is the loss in value due to functional deficiencies or inadequacies within the property depicted as the inability of the property to perform adequately the functions for which it was originally designed. External (economic) obsolescence is the loss in value from causes outside the boundaries of the property and is generally incurable. Appraisal depreciation is often called "accrued depreciation."

4. "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Fair market value reflects the value of property at its highest and best use, subject to regulatory constraints.

5. "Property" means property that is subject to assessment and taxation according to its value but does not include intangible property. Intangible property is property that is capable of private ownership separate from tangible property and includes moneys, credits, bonds, stocks, representative property, franchises, licenses, trade names, copyrights, and patents.

6. "Property which operates as a unit" or "unitary property" means property that is functionally or physically integrated in operation and construction and functions as an economic unit or "one thing."

7. "Rate Base" means the aggregate account balances reported as such by the cost regulated utility to the applicable state or federal regulatory commission.

8. "State Assessed Utility and Transportation Properties" include all property which operates as a unit across county lines, if the values must be apportioned among more than one county or state; all operating property of an airline, air charter service, and air contract service; and all property of public utilities as defined in Utah Code Ann. Section 59-2-102(21). For property tax valuation purposes, these properties may generally be classified as telecommunication properties, energy properties, and transportation properties, some of which may be cost regulated utilities.

a. "Telecommunication properties" means all telephone properties and other similar type properties that operate as a unit across county lines and are assessable by the Commission pursuant to Section 59-2-201.

b. "Energy properties" include the operating property of natural gas pipelines, natural gas distribution companies, liquid petroleum products pipelines, and electric corporations and other similar type entities and are assessable by the Commission pursuant to Section 59-2-201.

c. "Transportation properties" means all airline, air charter service, air contract service, railroad, and other similar type properties that operate as a unit across county lines and are assessable by the Commission pursuant to Section 59-2-201.

B. General Valuation Principles. State assessed utility and transportation properties shall be assessed at fair market value for property tax purposes based on generally accepted appraisal theory and the provisions of this rule.

1. Taxable Property and Unit Methodologies. All property, as defined in this rule, is subject to assessment, and if the property operates together as a unit, the assemblage or enhanced value attributable to the taxable property operating together should be included in the assessed value.

a. The preferred methods to determine the fair market value for all state assessed utility and transportation property are a cost indicator and a yield capitalization income indicator.

b. Other generally accepted appraisal methods may also be used when it can be demonstrated that such methods are necessary in order to more accurately estimate the fair market value, which includes assemblage or enhanced value, of properties that operate together as a unit.

c. The direct capitalization income method and the stock and debt market method may tend to capture the value of intangible property, as defined in this rule, at higher levels than other methods. Accordingly, the value attributable to such intangible property must be identified and removed from value. To the extent such intangible property cannot be identified and removed, relatively less weight shall be given to such methods in the correlation process, as set forth in Section B.5.

d. No final estimate of value will be imposed or considered unless the weighting percentages of the various value indicators used to correlate the final estimate of value are disclosed in writing. Disclosure of the weighting percentages also includes a written explanation describing why a party

weighted the particular indicators of value by the percentages so indicated.

e. A party may challenge a final estimate of value by proposing a different valuation methodology or weighting formula that establishes a more accurate final estimate of value. A challenge to a final estimate of value will be considered effective only if the proposed valuation methodology or weighting formula demonstrates, by a preponderance of the evidence, that it establishes a more accurate estimate of fair market value.

2. Cost Indicator. Cost is relevant to value under the principle of substitution, which states that no prudent investor would pay more for a property than the cost to construct a substitute property of equal desirability and utility without undue delay. Generally a cost indicator may be developed under one or more of the following approaches; replacement cost new less depreciation ("RCNLD"), reproduction cost less depreciation ("Reproduction Cost"), and historic cost less depreciation ("HCLD").

a. RCNLD. Replacement cost is the estimated cost to construct, at current prices, a property with utility equivalent to that being appraised, using modern materials, current technology and current standards, design, and layout.

b. Reproduction Cost. Reproduction cost is the estimated cost to construct, at current prices, an exact duplicate or replica of the property being assessed, using the same materials, construction standards, design, layout and quality of workmanship, and embodying all the deficiencies, superadequacies, and obsolescence of the subject property. Reproduction cost shall be adjusted for appropriate depreciation.

c. HCLD. The HCLD approach is the historic cost less depreciation, which may, depending upon the industry, be trended to current costs. Only trending indexes commonly recognized by the industry may be used as a trending adjustment to HCLD.

d. In the mass appraisal environment for state assessed utility and transportation property, RCNLD is impractical to implement. The preferred cost indicator of value is HCLD. A party may challenge the use of HCLD by proposing a different cost indicator that establishes a more accurate cost estimate of value. A challenge to the use of HCLD as the cost indicator of value will be considered effective only if the proposed cost indicator of value demonstrates, by a preponderance of the evidence, that it establishes a more accurate cost estimate of value.

3. Income Indicator. An income indicator recognizes that value is created by the expectation of future benefits to be derived from the property.

a. Yield Capitalization Approach. This income indicator shall be determined by converting future cash flows to present value as of the lien date by capitalizing future estimated cash flows at an appropriate discount rate. The yield capitalization formula is CF/(k-g), where "CF" is cash flow, "k" is the nominal, risk adjusted discount rate, and "g" is the expected future growth of the cash flow in the numerator. Each of these terms is defined below. A discounted cash flow method in which (i) individual years' cash flow are projected, (ii) the formula CF/(k-g) is used to compute terminal value, and (iii) the projected cash flows and terminal value are discounted back to present value; may be used as a substitute income valuation approach for the above yield capitalization approach when the use of a single representative annual cash flow is clearly inappropriate.

(1) Cash Flow ("CF"). Cash flow is restricted to cash flows provided by the operating assets in existence on the lien date, together with any replacements intended to maintain, and not expand or modify, the existing capacity or function thereof. Cash flow is calculated as net operating income (NOI) plus noncash charges (e.g., depreciation and deferred income taxes), less capital expenditures and additions to net working capital necessary to achieve the expected growth "g". The cash flows should reflect the cash flows available to pay sources of financing for the assets in existence on the lien date or an equivalent pool of assets. The capital expenditures should include only those expenditures necessary to replace or maintain existing plant and should not include any expenditures intended for expansion or productivity and capacity enhancements. If a taxpayer is unable to separate replacement capital expenditures from expansion capital expenditures, the taxpayer must provide the Property Tax Division sufficient data to adjust the "g" in the yield capitalization formula appropriately. If the taxpayer is unable to provide data to adjust the "g", the Property Tax Division will estimate an adjustment to cash flows or "g" based on the best information available. Information necessary for the Property Tax Division to calculate the appropriate cash flow shall be summarized and submitted to the Property Tax Division by March 1 on a form provided by the Property Tax Division. The calculation of Cash Flow may be illustrated by the following formula:

CF = NOI + Noncash Charges - Replacement Capital Expenditures - Additions to Net Working Capital

(a) Cash flow is the projected cash flow for the next year and may be estimated by reviewing the last five years' cash flows, forecasting future cash flows, or a combination of both.

(b) If cash flows for a subsidiary company are not available or are not allocated between subsidiary companies on the parent company's cash flow statements, then a method of allocating total cash flows must be developed based on sales, fixed assets, or other reasonable criteria. Whichever criterion is chosen, the subsidiary's total is divided by the parent's total to produce a percentage that is applied to the parent's total cash flow to estimate the subsidiary's cash flow.

(c) If the subject company does not provide the Commission with its most recent cash flow statements by March 1 of the assessment year, Property Tax Division may estimate cash flow using the best information available.

(2) Discount Rate ("k"). The discount rate shall be based upon a weighted average cost of capital considering current market debt rates and equity yields determined by recognized market measurements such as capital asset pricing model ("CAPM"), Risk Premium, Dividend Growth models, or other recognized models. The weighting of debt and equity should reflect the market value weightings of comparable companies in the industry.

(a) Cost of Debt. The cost of debt should reflect the current market (yield to maturity) of debt with the same credit rating as the subject company.

(b) Cost of Equity. In the discount rate, the CAPM is the

preferred method to estimate the cost of equity. More than one method may be used to correlate a cost of equity, but only if the CAPM method is weighted at least 75% in the correlation.

(c) CAPM. The CAPM formula is k(e) = R(f) + (Beta x Risk Premium), where k(e) is the cost of equity and R(f) is the risk free rate.

(i) Risk Free Rate ("R(f)"). The risk free rate shall be the current market rate on 20 year Treasury bonds.

(ii) Beta. The beta should reflect an average or value-weighted average of comparable companies. The beta of the comparable companies should be drawn from Value Line or a comparable source. Once a source is chosen, beta should be drawn consistently from this source. However, the beta of the specific assessed property should also be considered.

(iii) Risk Premium. The risk premium shall be obtained from the current Ibbotson Associates study. The risk premium shall be the arithmetic average of the spread between the return on stocks and long term bonds for the most recent 40 years.

(3) Growth Rate ("g"). The growth rate "g" is the expected future growth of the cash flow in the numerator of the formula given in CF/(k-g). If insufficient information is available to the Property Tax Division, either from public sources or from the taxpayer, to determine an appropriate "g", then "g" will be the expected inflationary rate as given by the Gross Domestic Product Price Deflator obtained in Value Line. The inflationary rate and the methodology used to produce it shall be disclosed in a capitalization rate study published by the Commission by February 15 of the assessment year.

b. Direct Capitalization Approach. This is an income approach that converts an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the normalized income estimate by an appropriate income capitalization rate or by multiplying the normalized income estimate by an appropriate factor.

4. Market Indicator. The market value of property is directly related to the prices of comparable, competitive properties; or the sale of the specific assessed property when such information is available. The market or sales comparison approach is estimated by comparing the subject property to similar properties that have recently sold. Because sales of state assessed utility and transportation properties are infrequent, the stock and debt approach may be used as a surrogate to the market approach. The stock and debt method is based on the accounting principle which holds that the market value of assets equal the market value of liability plus shareholder's equity.

5. Correlation. When reconciling value indicators into a final estimate of value, the appraiser shall take into consideration the availability, and quality or reliability of data and the strength and weaknesses of each value indicator. The percentage weight assigned to each indicator in the correlation process shall be established, disclosed and explained as set forth in Section B.1.

6. Non-operating property. Property that is not necessary to the operation of the state assessed utility or transportation properties and is assessed by the local county assessor, and property separately assessed by the Property Tax Division, such as registered motor vehicles, shall be removed from the correlated unit value or from the state allocated value.

7. Leased property. All tangible operating property owned, leased, or used by state assessed utilities and transportation companies is subject to assessment.

8. Property Specific Considerations. The Commission recognizes that because of unique differences between certain types of properties and industries, modifications or alternatives to these general cost and yield income indicators, as set forth in Sections C., D., and E., may be required for the following industries: (a) cost regulated utilities, (b) telecommunications properties, and (c) transportation properties.

C. Cost regulated utilities:

1. Cost Indicator. The HCLD approach is the preferred cost indicator of value for cost regulated utilities because it represents an approximation of the basis upon which the investor can earn a return. The HCLD approach is calculated by taking the historic cost less deprecation as reflected in the state assessed utility's net plant accounts, and by then (1) subtracting intangible property, (2) subtracting any items not included in the state assessed utility's rate base (e.g., deferred federal income taxes ("DFIT") and, if appropriate, acquisition adjustments), and (3) adding any taxable items not included in the state assessed utility's net plant account or in rate base.

a. Deferred Federal Income Taxes. DFIT is an accounting entry that reflects a timing difference for reporting income and expenses. Accumulated DFIT reflects the difference between the use of accelerated depreciation for income tax purposes and the use of straight-line depreciation for financial statements. For traditional rate base regulated companies, regulators generally exclude DFIT from rate base, recognizing it as ratepayer contributed capital. Where rate base is reduced by DFIT for rate base regulated companies, DFIT may be removed from HCLD as a surrogate measure for economic obsolescence.

b. DFIT can be a surrogate measure for economic obsolescence. If a study is prepared that authenticates actual economic obsolescence and is approved by the Commission, the amount of the actual economic obsolescence will be subtracted from HCLD to develop the cost indicator of value.

2. Income indicator. The yield capitalization approach set forth in Section B.3. is the preferred method to derive the income indicator of value.

D. Telecommunications Companies:

1. Cost Indicator. This includes the operating property of local exchange carriers, local access providers. long distance carriers, cellular telephone or personal communication service (PCS) providers and pagers. The HCLD approach set forth in Section B.2. is the preferred method to derive the cost indicator of value.

2. Income Indicator. The yield capitalization approach set forth in Section B.3. is the preferred method to derive the income indicator of value.

E. Transportation Properties. These include the operating property of long haul and short line railroads, commercial airlines, including major and small passenger carriers and major and small air freighters.

1. Railroads.

a. Cost Indicator. The Railroad industry is not rate base regulated and does not typically have a majority of its investment in property of recent vintage. Accordingly, for Railroads, the cost indicator should generally be given little or no weight because there is no observable relationship between

cost and fair market value. Cost valuation should be based on trended historical costs less depreciation. Additions should be made for material and supplies and operating leased equipment. Deductions should be made for all capitalized intangible property such as customized computer software. All forms of depreciation should be measured and appropriately deducted.

b. Income Indicator. The yield capitalization approach set forth in Section B.3. is the preferred method to derive the income indicator of value.

2. Commercial airlines, including major and small passenger carriers and major and small air freighters.

a. Cost Indicator. The trended HCLD approach set forth in Section B.2. is the preferred method to derive the cost indicator of value.

b. Income Indicator. The yield capitalization approach set forth in Section B.3. is the preferred method to derive the income indicator of value.

F. This rule shall have an effective date of January 1, 1999.

KEY: taxation, personal property, property tax, appraisal

January 12, 1999	**Art. XIII, Sec 2**
Notice of Continuation May 8, 1997	**9-2-201**
	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

R912. Transportation, Motor Carrier, Ports-of-Entry.
R912-3. Restriction of Truck Traffic on SR-128. Legal and Permitted Vehicles.
R912-3-1. Restrictions on Large Commercial Vehicles Traveling SR-128.

(1) The Utah Transportation Commission limits the truck traffic to local usage along SR-128 from near Moab to I-70 in Grand County, as follows:

(a) No through commercial truck over 55,000 pounds GVW.

(b) Trucks over 55,000 pounds GVW limited to local usage of businesses or residents along SR-28.

KEY: permits, safety regulation, trucks

1993	**72-1-102**
Notice of Continuation June 27, 1997	**72-7-408**
	72-1-201

R912. Transportation, Motor Carrier, Ports-of-Entry.
R912-8. Minimum Tire, Axle and Suspension Ratings for Heavy Vehicles and the Use of Retractable or Variable Load Suspension Axles in Utah.
R912-8-1. Authority.

Sections 72-1-102, 72-7-404, 72-7-406, 72-1-201.

R912-8-2. Definitions.

(1) "Axle Group" means any axles on a vehicle that are within eight feet of each other.

(2) "Bridge Formula" as defined in Section 72-7-404 of the Utah Code Annotated.

(3) "Fixed Axle" means an axle that is not steerable, self steering or retractable.

(4) "Legal Weight" as defined in Section 72-7-404 of the Utah Code Annotated.

(5) "Load Rating" means the maximum load that the equipment is rated to carry as designated by the Federal Motor Carrier standards.

(6) "Variable Load Suspension (VLS) Axle" means an axle that can be loaded mechanically to various capacities.

(7) "Retractable Axles" means an axle that can be lifted from the pavement surface, but cannot mechanically vary its weight-bearing capability.

(8) "Tire Scrubbing" means side movement of the tire associated with the turning movement of a vehicle.

(9) "Quad Axle Group" means a group of four consecutive fixed axles.

R912-8-3. Purpose.

(1) The purpose of this rule is to promote safety and reduce the pavement damage resulting from operating with underrated tires or suspensions and/or retractable or VLS axles. Some trucking firms have utilized underrated tires, axles and suspensions systems which cannot safely and practically support excess weight, and adjacent axles become overloaded. Fixed axles scrub sideways to some degree when a vehicle is operated through a turning movement. This scrubbing is damaging to the pavement surface. The degree to which a tire scrubs is related tot he distance between the extreme fixed axles in an axle group. Quad axle groups increase tire scrubbing considerably because of the extreme axle spacings involved.

(2) Some companies utilize retractable of VLS axles to improve the load-carrying flexibility of their vehicles. These axles increase the weight that the vehicle can legally carry, while providing needed maneuverability at loading and unloading sites. Concrete and construction companies have used these axles on their vehicles to transport materials to construction sites, causing a minimum of pavement and bridge damage. These axles can then be retracted or "unloaded" to allow a driver to more easily back up or steer. Since they can be misused and abused, it is in the best interest of safety and infrastructure preservation to establish and enforce specific operating requirements for vehicles so equipped in the state of Utah.

R912-8-4. Provisions.

(1) Vehicles with a gross vehicle rating exceeding 26,000 pounds are limited as follows:

(A) Axles shall not exceed their designed load capacity. Documentation of axle capacity, such as an attached data plate or written certification from a vendor, shall be available with each vehicle.

(B) Single tires shall be a minimum size of 8.25 x 20. All tires shall meet Federal Motor Carrier Safety load rating requirements.

(C) No more than three fixed axles shall be allowed in any group. Retractable or VLS axles installed after January 1990 shall be self-steering on power units and when augmenting a tridem group on trailers. Non-divisible loads may be exempt from these restrictions with written approval from the Utah Department of Transportation (UDOT).

(D) No axle in a group with a retractable or VLS axle shall exceed legal or bridge formula weight requirements.

(E) Controls for raising and lowering retractable or VLS axles may be located in the cab of the power unit, but the controls regulating pressure to such axles shall be positioned outside the cab so as to be inaccessible to the driver when the vehicle is in motion.

(F) Tires, axles or suspension systems which are unusual or which vary from these requirements shall be reviewed and approved by UDOT prior to operation.

KEY: motor vehicle safety
July 16, 1996 **72-1-102**
72-7-404
72-7-406
72-1-201

R912. Transportation, Motor Carrier, Ports of Entry.
R912-76. Single Tire Configuration.
R912-76-1. Purpose.

The use of single tires on heavy vehicles has been indicated to be one of the factors damaging to pavements, in the form of increased fatigue and rutting. Rutting has been shown to have increased dramatically in recent years. Significant pavement rutting can result in an unsafe condition to the traveling public, and is very costly to correct, the Transportation Commission finds it in the best interest of the safety and convenience of the traveling public to limit and discourage the use of single tires in Utah.

R912-76-2. Authority.

Sections 12 63-49-4, 72-1-102, 72-7-404, 72-7-406, 72-1-201.

R912-76-3. Provisions.

1. Tire loading on vehicles requiring an overweight or oversize permit shall not exceed 500 pounds per inch of tire width for tires eleven inches wide and greater, and 450 pounds per inch of tire width for tires less than eleven inches wide, as designated by the tire manufacturer on the side wall of the tire. Single axle loading shall not exceed 20,000 pounds, and tandem axle loading shall not exceed 34,000 pounds.

2. The use of single tires on any combination vehicle requiring an overweight or oversize permit shall not be allowed on single axles. A single axle is defined as one having more than eight feet between it and the nearest axle or group of axles on the vehicle.

3. Tire loading on permitted vehicles shall not exceed 600 pounds per inch of tire width as designated by the tire manufacturer on the sidewall.

D. Non-divisible loads may be exempt from these restrictions upon written approval from the Department.

E. No wheel on steering or castering axles shall exceed 600 pounds per inch of tire width.

F. In no case shall any tire loading exceed the tire manufacturer maximum load rating (existing Federal requirement).

G. The above restrictions will be effective on October 1, 1988, to allow the trucking industry to properly prepare for these changes.

H. Studies presently underway on the safety and pavement damage done by single tires may lead to modifications to this rule in the near future. This may lead to the total elimination or expanded use of single tires on other than steering or castering axles.

KEY: tires

1993	**72-1-102**
Notice of Continuation September 29, 1997	**72-7-404**
	72-7-406
	72-1-201

R986. Workforce Services, Employment Development.
R986-413. Program Standards.
R986-413-302. Work Requirements.

The department adopts 7 CFR 273.7, 1992 ed. and Public Law 104-193, section 815 which are incorporated by reference.

1. Current Department Practices for the Employment Program

a. Eligible household members shall complete an assignment to the employment program once each 12 months or be exempt.

b. Exempt persons may volunteer.

c. An Employment Program assignment consists of:

i. assignment to a job search workshop

ii. assignment to a self-sufficiency unit

iii. a person is not assigned if neither of the above is available

d. noncomplying individuals shall be sent a notice and allowed ten days to complete the assignment or establish good cause.

2. Reducing Work Hours

3. Voluntary Quit

R986-413-304. Able-Bodied Adults Without Dependents.

The department adopts Public Law 104-193, section 824 and Public Law 105-33, Title I, Section 1001 which is incorporated by reference.

1. Current Department Practices

a. Persons who are participating in the Working Towards Employment Program or Refugee Cash Assistance Program will also satisfy the work requirement.

R986-413-306. Expedited Service.

The department adopts 7 CFR 273.2(a) through (e) and 7 CFR 273.2(i), 1996 ed. and The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Sec. 838, which are incorporated by reference.

R986-413-308. Federal Reduction, Suspension, or Cancellation of Food Stamp Benefits.

The department adopts 7 CFR 271.7 and 7 CFR 273.10(e)(2)(vi), 1992 ed. which are incorporated by reference.

KEY: food stamps
January 20, 1999 **35A-3-103**
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 $275 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 20, 1999 35A-3-103
Notice of Continuation February 10, 1997

R986. Workforce Services, Employment Development.
R986-417. Documentation.
R986-417-702. Verification.

The department adopts 7 CFR 273.2(f)(1) through (3), 1992 ed. which are incorporated by reference.

1. Current Department Practices

a. Non required verifications are requested on a case by case basis based upon the judgement of the caseworker.

b. Deductible expenses that do not result in a change in benefits do not need to be verified.

R986-417-704. Verification on Reported Changes.

The department adopts 7 CFR 273.2(f)(8), 1992 ed. which is incorporated by reference.

R986-417-706. Sources of Verification.

The department adopts 7 CFR 273.2(f)(4) through (7), 1992 ed. which are incorporated by reference.

R986-417-708. Income and Eligibility Verification System (IEVS).

The department adopts 7 CFR 272.8 and 7 CFR 273.2(f)(9), 1992 ed. which are incorporated by reference. The department shall require compliance with Section 35A-3-105.

1. Current Department Practices

a. Agreements between IRS, Division of Workforce Services, Workforce Information and Payment Services and the Social Security Administration are on file with the department.

b. Access to Unemployment Compensation Benefits is by direct access to Division of Workforce Services, Workforce Information and Payment Services computer systems.

c. Information received from IRS reports is confidential information and is safeguarded the same as any other case record information.

d. IRS information is confidential and is not available to the client. Information that has been verified is no longer confidential and can be released to the client as needed.

e. Questions about current eligibility must be resolved or the client is no longer eligible.

f. Questions about past eligibility periods do not affect current eligibility and the case is not closed even if it remains unresolved.

g. All overpayments are referred to the Office of Recovery Services.

R986-417-710. Application Processing.

The department adopts 7 CFR 273.2(a) through (e), 7 CFR 273.10(a)(3) and 7 CFR 273.2(j) through (k), 1992 ed. which are incorporated by reference.

1. Current Department Practices

a. A Public Assistance or categorically eligible household's may apply for Food Stamps at the same time they apply for Public Assistance using the same application form.

b. A single interview is conducted for clients who have applied for other assistance at the same time they applied for Food Stamps.

c. If applicants fail to appear for their first scheduled interview, a second interview need not be scheduled unless requested by the applicant household. When the second interview is not rescheduled, the application shall not be denied before 30 days. If the applicant household schedules a second interview and does not appear for the second interview, the application can be denied after the second missed interview, but no later than 30 days after the date of application.

R986-417-712. Cases Reopened Without A New Application.

The department adopts 7 CFR 273.21(k)(2))(ii) and 7 CFR 273.14(f)(2), 1992 ed. which are incorporated by reference.

1. Current Department Practices

a. When a case is closed as a result of an administrative error, it may be reopened without a new application.

b. When a case is closed because the client failed to comply with a request for information, the case may be reopened without a new application if the client provides the requested information by the end of the month in which the case closed.

R986-417-714. Processing Standards.

The department adopts 7 CFR 273.2(h), 7 CFR 274.2 and 7 CFR 273.10(g), 1992 ed. which are incorporated by reference.

1. Current Department Practices

a. Applications maybe denied after applicants have been interviewed and have been requested, in writing, to provide required verification, if they fail to return with the requested verification after 10 days, but no later the 30th day after the date of application.

R986-417-716. Certification Periods.

The department adopts 7 CFR 273.10(f), 1992 ed. which is incorporated by reference.

1. Current Department Practices

a. Certification periods are calendar months rather than fiscal months.

b. All households must have a face-to-face interview at the time of application and at the time of review, or at least once every 12 months.

i. Households with earned income are only required to have the face-to-face interview once every 12 months.

ii. However, if a household requests a face-to-face interview, one must be conducted. The interview must be conducted on the same day that the household brings the review form to the office.

iii. Telephone interviews can be done when a face-to-face is waived if one is necessary to determine continued eligibility or the benefit amount.

R986-417-718. Recertification.

The department adopts 7 CFR 273.14, 1992 ed. which is incorporated by reference.

1. Current Department Practices

a. For certification periods of two months or less, the notice of expiration and the recertification forms are given to the client during the initial application process.

b. The due date for recertification is the first working day of the recertification month.

c. As clients report a change in circumstances, the recertification may be extended for up to 12 months since the last recertification was completed.

d. Clients will be given the longest certification period possible based on the predictability of the household circumstances.

e. In no instance will a certification period extend more than 12 months.

f. All cases with earned income will have three month reviews. If an application is received after the 15th of the month, the case will have a four month review for the inital certification period.

KEY: food stamps, benefits
January 20, 1999 35A-3-103
Notice of Continuation February 10, 1997 7 CFR 273.14

R986. Workforce Services, Employment Development.
R986-419. Income Limits.
R986-419-900. Food Stamp Program Income Limits.

The department adopts 7 CFR 273.9 (a), 1995 ed. and The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, signed into law August 22, 1996, which are incorporated by reference.

The Food Stamp Program income limits are updated annually. The current limits are listed in the Food Stamps Manual, Tables IV, V, VI. That manual is available for public inspection at each Department of Workforce Services Employment Center and at the Employment Development Division, 1385 South State Street, Salt Lake City, UT.

KEY: food stamps
January 20, 1999 35A-3-103
Notice of Continuation August 18, 1997

R986. Workforce Services, Employment Development.
R986-420. Maximum Allotments.
R986-420-100. Maximum Food Stamp Allotments.

The department adopts 7 CFR 273.10(e)(4), 1995 ed. and The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, signed into law August 22, 1996, which are incorporated by reference.

The Food Stamp Program maximum food stamp allotments are updated annually. The current maximum allotment amounts are listed in the Food Stamps Manual, Table VII (Basic Coupon Issuance Tables). That manual is available for public inspection at each Department of Workforce Services Employment Center and at the Employment Development Division, 1385 South State Street, Salt Lake City, UT.

KEY: food stamps
January 20, 1999 35A-3-103
Notice of Continuation August 18, 1997

R986. Workforce Services, Employment Development.
R986-421. Demonstration Programs.
R986-421-101. Family 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. The Single Parent Employment Program has been renamed the Family Employment Program.

2. The following definitions apply:

a. "Diversion" means a one time Family Employment Program payment that may equal up to three months of financial assistance.

b. "Participant" means any applicant for or recipient of the Family 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 Family Employment Program.

3. The goal of the Family Employment Program is to increase family income through employment and child support.

4. The Family Employment Program will operate statewide.

5. The following exceptions regarding Family Employment Program participants apply to R986-411 through R986-420;

a. Participants are required to report the following changes in income:

(i) change in the income source, both unearned and earned;

(ii) change in employment status;

(iii) a change from fulltime to parttime or parttime to fulltime;

(iv) a change in wage rate or salary.

b. The diversion payment is not counted in the food stamp allotment calculation.

c. Recertification must be completed every 12 months with a face-to-face interview at least every 24 months.

d. Participants will remain in the Family Employment Program for 24 months after termination of financial assistance.

KEY: income, demonstration*
January 20, 1999 **35A-3**
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