R58. Agriculture and Food, Animal Industry.
R58-1. Admission and Inspection of Livestock, Poultry, and Other Animals.
R58-1-1. Authority.

A. Promulgated under the authority of Title 4, Chapter 31 and Subsections 4-2-2(1)(c)(i), 4-2-2(1)(j).

B. Intent: It is the intent of these rules to eliminate or reduce the spread of diseases among livestock by providing standards to be met in the movement of livestock within the State of Utah, INTRASTATE, and Import movements, INTERSTATE, of livestock, poultry and other animals.

R58-1-2. Definitions.

A. "Approved Livestock Market" - A livestock market which meets the requirements as outlined in 9 CFR 78, January 1, 2000 edition, Title 4, Chapter 30, and Rule R58-7.

B. "Livestock Market Veterinarian" - A Utah licensed and accredited veterinarian appointed by the Department of Agriculture and Food to work in livestock markets in livestock health and movement matters.

C. "Official Random Sample Test, 95/10" - A sampling procedure utilizing official pseudorabies serologic tests which provides a 95 percent probability of detecting infection in a herd in which at least 10 percent of the swine are seropositive for pseudorabies. Each segregated group of swine on an individual premises must be considered a separate herd and sampled as follows:

Less than 100 head -- Test 25
100 - 200 head ----- Test 27
201 - 999 head ----- Test 28
1,000 and over ----- Test 29

D. "Official Random Sample Test, 95/5" - A sampling procedure utilizing official pseudorabies serologic tests which provides a 95 percent probability of detecting infection in a herd in which at least five percent of the swine are seropositive for pseudorabies. Each segregated group of swine on an individual premises must be considered a separate herd and sampled as follows:

Less than 100 head -- Test 45
100 - 200 head ----- Test 51
201 - 999 head ----- Test 57
1,000 and over ----- Test 59

E. "Qualified Feedlot" - A feedlot approved by the Utah Department of Agriculture and Food to handle INTRASTATE heifers, cows or bulls which originate from Utah herds. These animals shall be confined to a drylot area which is used to upgrade or finish feeding animals going only to slaughter.

F. "Reportable Disease List" - A list of diseases and conditions developed by the state veternarian that may affect the health and welfare of the animal industry of the state, reportable to the state veterinarian.

G. "Test Eligible Cattle and Bison" - All cattle or bison six months of age or older, except:

1. Steers, spayed heifers;

2. Official calfhood vaccinates of dairy breeds under 20 months of age and beef breeds under 24 months of age which are not parturient, springers, or post parturient;

3. Official calfhood vaccinates, dairy or beef breeds of any age, which are Utah Native origin.

4. Utah Native Bulls from non-infected herds.

H. "Official Calfhood Vaccinate" - Female cattle of a dairy breed or beef breed vaccinated by a USDA Veterinary Services representative, State certified technician, or accredited Veterinarian with an approved dose of RB51 Vaccine or other USDA approved agent while from 4 to 12 months of age in accordance with its labeling. These cattle must be properly identified by official tattoos and ear tag or registration tattoo and be reported on an official vaccination certificate (VS Form 4-24) within 30 days to the State Veterinarian.

I. "Exposed Animal", "Reactor", "Suspect", as defined in the United States Department of Agriculture; Animal and Plant Health Inspection Service and Veterinary Services Brucellosis Eradication Uniform Methods and Rules and 9 CFR 78.

R58-1-3. Intrastate Cattle Movement - Rules - Brucellosis.

A. The State Veterinarian may require brucellosis testing of cattle, bison, and elk, moving intrastate as necessary to protect against potential disease threat or outbreak.

B. Utah Department of Agriculture and Food Livestock Inspectors will help regulate Intrastate movement of cattle according to Brucellosis rules at the time of change of ownership inspection.

R58-1-4. Interstate Importation Standards.

A. No animal, poultry or bird of any species or other animal including wildlife, that is known to be affected with or has been exposed to a contagious, infectious or communicable disease, or that originates from a quarantined area, shall be shipped, transported or moved into the State of Utah until written permission for such entry is first obtained from Veterinary Services Division, United States Department of Agriculture, Animal and Plant Health Inspection Service, and Utah Department of Agriculture and Food, State Veterinarian or Commissioner of Agriculture and Food.

B. Certificate of Veterinary Inspection. An official Certificate of Veterinary Inspection issued by an accredited veterinarian is required for importation of all animals and poultry. A copy of the certificate shall be immediately forwarded to the Utah Department of Agriculture and Food by the issuing veterinarian or the livestock sanitary official of the state of origin.

C. Permits. Livestock, poultry and other animal import permits may be issued by telephone to the consignor, a consignee or to an accredited veterinarian responsible for issuing a Certificate of Veterinary Inspection, and may be obtained from the Utah Department of Agriculture and Food, 350 North Redwood Road, PO Box 146500, Salt Lake City, Utah 84114-6500, Phone (801) 538-7164; after hours and weekends, (435) 882-0217; (801) 773-5656.

R58-1-5. Cattle and Bison.

A. Import Permit and Certificate of Veterinary Inspection.

1. No cattle or bison may be imported into Utah without an import permit issued by the Department of Agriculture and Food. A Certificate of Veterinary Inspection and an import permit must accompany all cattle and bison imported into the state. All cattle and bison must carry some form of individual identification, 1) a brand registered with an official brand

agency, or 2) an ear tag or a registration tattoo. Identification must be listed on the Certificate of Veterinary Inspection. Official individual identification used for testing purposes must be shown on the Certificate of Veterinary Inspection. The import permit number must be listed on the Certificate of Veterinary Inspection. This includes exhibition cattle. Commuter cattle are exempt as outlined in Subsection R58-1-5(B).

2. The following cattle are exempted from (1) above:

a. Cattle consigned directly to slaughter at a state or federally inspected slaughter house; and

b. Cattle consigned directly to a State or Federal approved Auction Market.

c. Movements under Subsections R58-1-5(A)(2)(a), and R58-1-5(A)(2)(b) must be in compliance with state and federal laws and regulations and must be accompanied by a weighbill, brand certificate, or similar document showing some form of positive identification, signed by the owner or shipper stating the origin, destination, number and description of animals and purpose of movement.

B. Commuter Cattle. Commuter, temporary grazing, cattle may enter Utah or return to Utah after grazing if the following conditions are met.

1. A Certificate of Veterinary Inspection or a commuter permit approved by the import state and the State of Utah must be obtained prior to movement into Utah. This will allow movements for grazing for current season if the following conditions are met:

a. All cattle shall meet testing requirements as to State classification for interstate movements as outlined in 9 CFR 1-78; USDA, Animal and Plant Health Inspection Services, Brucellosis Eradication, Uniform Methods and Rules, May 6, 1992 and approved by cooperating States.

b. Commuter cattle shall not be mixed with quarantined, exposed, or suspect cattle nor change ownership during the grazing period.

2. No quarantined, exposed or reactor cattle shall enter Utah.

C. Brucellosis. Prior to importation of cattle or bison into Utah the following health restrictions must be met.

1. Bison heifers of vaccination age between four and 12 months must be officially vaccinated for brucellosis prior to entering Utah. All female bison cattle imported after July 1, 1984, must have a legible brucellosis calfhood vaccination tattoo to be imported or sold within the State of Utah, unless going directly to slaughter, or qualified feedlot to be sold for slaughter, or to an approved livestock market to be sold for slaughter or for vaccination.

a. Bison heifers of vaccination age may be vaccinated upon arrival by special permit.

2. Test eligible cattle imported from states designated as brucellosis free, that are acquired directly from the farm of origin and moving directly to the farm of destination are not required to be tested for brucellosis prior to movement.

3. Test eligible cattle imported from states designated as brucellosis free, that are acquired through "trading channels", or any "non-farm of origin source" must be tested negative for brucellosis within 30 days prior to entry.

4. All test eligible cattle imported from states that have not been designated as brucellosis free must test negative for brucellosis within 30 days before movement into Utah.

5. Exceptions to the above testing requirements include Test Eligible Cattle imported to Utah and moving directly to:

a. an approved livestock market, or

b. to a "qualified feedlot", or

c. for immediate slaughter to a slaughtering establishment where federal or state inspection is maintained.

A brand inspection certificate, which indicates the intended destination is required for cattle entering the state under these provisions.

6. No reactor cattle or cattle from herds under quarantine for brucellosis will be allowed to enter the state except when consigned to a slaughtering establishment where recognized state or federal meat inspection is maintained. An import permit and a Veterinary Services Form 1-27 prior to shipment are also required.

7. Entry of cattle which have been retattooed is not permitted unless they are moved for immediate slaughter to a slaughtering establishment where state or federal inspection is maintained or to not more than one state or federal approved market for sale to a qualified feedlot or slaughtering establishment.

8. Entry of cattle which have been adult vaccinated is not permitted unless they are for immediate slaughter where state or federal inspection is maintained.

D. Tuberculosis.

A negative test is required within 60 days prior to shipment for all breeding cattle originating within a quarantined area or from reactor or exposed herds.

E. Scabies.

No cattle affected with, or exposed to scabies shall be trailed, driven, shipped or otherwise moved into Utah. Cattle from a county where scabies have been diagnosed during the past 12 months must be officially treated within 10 days prior to shipment into Utah. The date of treating and products used must be shown on the Certificate of Veterinary Inspection; also the approved vat number and location.

F. Splenic or Tick Fever. No cattle infested with ticks, Margaropus annulatus, or exposed to tick infestations shall be shipped, trailed, or driven, or otherwise imported into the State of Utah for any purpose.

G. Exhibitions, Fairs, and Shows.

1. Dairy cattle and cattle for breeding purposes imported for exhibition or show purposes only to be returned to state of origin may enter provided:

a. The cattle are accompanied by the proper Certificate of Veterinary Inspection and import permit.

b. The cattle must have negative T.B. test within 60 days.

c. The cattle must have a negative brucellosis test within 30 days prior to entrance. Vaccinates under age are acceptable.

H. Trichomoniasis.

All bulls imported to Utah shall be in compliance with R58-21-3(A), which requires testing of all bulls over nine months of age for Trichomoniasis prior to entry, with some exceptions.

R58-1-6. Horses, Mules, and Asses.

Horses, mules and asses may be imported into the State of

Utah when accompanied by an official Certificate of Veterinary Inspection. The certificate must state that the equine animals described were examined on the date indicated and found free from symptoms of any infectious or communicable disease such as CEM, Contagious Equine Metritis, and EIA, Equine Infectious Anemia. The Certificate of Veterinary Inspection must show a negative coggins test within one year previous to the time the certificate was issued. Utah horses returning to Utah as part of a commuter livestock shipment are exempted from the Certificate of Veterinary Inspection requirements; however, a valid Utah horse travel permit as outlined under Sections 4-24-22 or 4-24-23 and Section R58-9-4 is required for re-entering Utah.

R58-1-7. Swine.

A. Stocking, Feeding, and Breeding swine. Swine for stocking, breeding, feeding or exhibition may be shipped into the state if the following requirements are met:

1. Import Permit and Certificate of Veterinary Inspection - All swine must be accompanied by an approved Certificate of Veterinary Inspection stating they are clinically free from infectious or contagious disease or exposure and have not been fed raw garbage. The Certificate of Veterinary Inspection must show individual identification, ear tags, tattoos, registration numbers, micro chips or other permanent means. An import permit issued by the Department of Agriculture and Food must accompany all hogs, including feeder hogs imported into the state.

2. Test Status. The Certificate of Veterinary Inspection must list the brucellosis, and pseudorabies test status of the animals.

3. Quarantine - All swine shipped into the state for feeding or breeding purposes are subject to an 18 day quarantine beginning with the date of arrival at destination. The department shall be notified by the owner of date of arrival. Release from quarantine shall be given by the department only when satisfied that health conditions are satisfactory.

4. Brucellosis - All breeding and exhibition swine over the age of three months shipped into Utah must pass a negative test for brucellosis within 30 days prior to movement into the state or originate from a validated brucellosis free herd. A validated brucellosis free herd number and date of last test is required to be listed on the Certificate of Veterinary Inspection.

5. Pseudorabies - All breeding, feeding and exhibition swine must pass a negative pseudorabies test within the last thirty days unless they originate from a recognized qualified pseudorabies free herd. However, feeder swine may come into the state from a herd of origin in a Stage III, IV, or V state as classified by the Official Pseudorabies Eradication Program Standards 6-19-91. A 30 day retest is required on all breeding and exhibition swine brought into the state. Swine which are infected or exposed to pseudorabies may not enter the state, except swine consigned to a slaughterhouse for immediate slaughter and must be moved in compliance with 9 CFR 1-71.

6. Erysipelas - Purebred and breeding swine shall be immunized with erysipelas bacterin not less than 15 days prior to importation.

7. Leptospirosis - All breeding and exhibition swine over four months of age shall have passed a negative leptospirosis test within 30 days of entry, or be part of an entire negative herd test within the previous 12 months or be vaccinated for leptospirosis at least 15 days prior to entry. Herd and vaccination status must be stated on the Certificate of Veterinary Inspection.

B. Immediate Slaughter

Swine shipped into Utah for immediate slaughter must not have been fed raw garbage, must be shipped in for immediate slaughter with no diversions, and must be free from any infectious or contagious disease in compliance with 9 CFR 71.

R58-1-8. Sheep.

A. All sheep imported must be accompanied by a Certificate of Veterinary Inspection certifying the sheep are free of communicable diseases or exposure.

1. Blue Tongue. No sheep infected with or exposed to blue tongue may enter Utah. No sheep from an area under quarantine because of blue tongue may be transported into Utah without obtaining an import permit and a Certificate of Veterinary Inspection certifying that the sheep have originated from a flock free of blue tongue and have been vaccinated against blue tongue at least 30 days prior to entry.

2. Foot Rot. Sheep must be thoroughly examined for evidence of foot rot. The Certificate of Veterinary Inspection must certify that the sheep were examined and are free from foot rot.

R58-1-9. Poultry.

All poultry imported into the state shall comply with Title 4, Chapter 29 and R58-6 governing poultry which requires a prior permit from the Department of Agriculture and Food. This number can be called for information concerning permits: (801) 538-7164.

R58-1-10. Goats and Camelids.

A. Goats being imported into Utah must meet the following requirements:

1. Dairy goats must have a permit from the Department of Agriculture and Food (phone 801-538-7164) and, an official Certificate of Veterinary Inspection showing a negative tuberculosis test within 60 days, and a negative brucellosis test within 30 days prior to entry or be from a certified brucellosis free herd and tuberculosis free area. They must be free of communicable diseases or exposure thereto; there must be no evidence of Caseous Lymphadenitis (abscesses).

2. Meat type goats must have a Certificate of Veterinary Inspection indicating they are free from any communicable diseases or exposure and that there is no evidence of caseous lymphadenitis (abscesses).

3. Exemption - Goats for slaughter may be shipped into Utah directly to a slaughtering establishment or to a state and federally approved auction market for sale to such slaughtering establishment. However, they must be accompanied by a Certificate of Veterinary Inspection indicating they are free from any communicable diseases or exposure and that there is no evidence of caseous lymphadenitis, abscesses.

B. Camelids shall be accompanied by:

1. a Certificate of Veterinary Inspection;

2. Negative TB test within 60 days;

3. Negative Brucellosis within 30 days.

R58-1-11. Psittacine Birds.

No Psittacine birds shall be shipped into the State of Utah unless a permit is obtained from the Department prior to importation. Request for a permit must be made by an accredited veterinarian certifying that the birds are free from any symptoms of any infectious, contagious or communicable disease. The request must also state the number and kinds of birds to be shipped into Utah, their origin, date to be shipped and destination, all listed on the Certificate of Veterinary Inspection.

R58-1-12. Dogs and Cats.

All dogs, cats and ferrets over four months of age shall be accompanied by an official Certificate of Veterinary Inspection, showing vaccination against rabies within 12 months. The date of vaccination, name of product used, and expiration date must be given.

R58-1-13. Game and Fur-Bearing Animals.

A. Contagious or Communicable Disease. No game or fur bearing animals will be imported into Utah without a prior permit being obtained from the Department. Each shipment shall be accompanied by an official Certificate of Veterinary Inspection certifying they are free from all contagious and communicable diseases and exposure thereto.

B. Mink.

All mink entering Utah shall have originated on ranches or herds where virus enteritis has not been diagnosed within the past three years.

C. Elk brought into the state under regulations governing elk farming and hunting shall meet the importation requirements of R58-18-11 and 12.

R58-1-14. Zoo Animals.

The entry of common zoo animals, as monkeys, apes, baboons, rhinoceros, giraffes, zebras, elephants, to be kept in zoos, or shown at exhibitions is authorized when a permit has been obtained from the Department. Movement of these animals must also be in compliance with the Federal Animal Welfare Act, 7 USC 2131-2156.

R58-1-15. Wildlife.

It is unlawful for any person to import into the State of Utah any species of live native or exotic wildlife except as provided in Title 23, Chapter 13. Fish and Wildlife Services, 1596 West North Temple, Salt Lake City, Utah 84116, (801) 538-4887. All wildlife imports shall meet the same Department requirements as the domestic animals.

R58-1-16. Duties of Carriers.

Owners and operators of railroads, trucks, airplanes, and other conveyances are forbidden to move any livestock, poultry, or other animals into or within the State of Utah or through the State except in compliance with the provisions set forth in these rules.

A. Sanitation. All railway cars, trucks, airplanes, and other conveyances used in the transportation of livestock, poultry or other animals shall be maintained in a clean, sanitary condition.

B. Movement of Infected Animals. Owners and operators of railway cars, trucks, airplanes, and other conveyances that have been used for movement of any livestock, poultry, or other animals infected with or exposed to any infectious, contagious, or communicable disease as determined by the Department, shall be required to have cars, trucks, airplanes, and other conveyances thoroughly cleaned and disinfected under official supervision before further use is permissible for the transportation of livestock, poultry or other animals.

C. Compliance with Laws and Rules. Owners and operators of railroad, trucks, airplanes, or other conveyances used for the transportation of livestock, poultry, or other animals are responsible to see that each consignment is prepared for shipment in keeping with the State and Federal laws and regulations. Certificate of Veterinary Inspection, brand certificates, and permits should be attached to the waybill accompanying attendant in charge of the animals.

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R58. Agriculture and Food, Animal Industry.
R58-6. Poultry.
R58-6-1. Authority.

Promulgated under authority of Section 4-29-1.

R58-6-2. Definition of Poultry.

Domesticated fowl, including chickens, turkeys, waterfowl, ratites, and game birds, except doves and pigeons, which are bred for the primary purpose of producing eggs or meat.

R58-6-3. Certificate of Veterinary Inspection.

All poultry and hatching eggs entering Utah must have a Certificate of Veterinary Inspection or a National Poultry Improvement Plan Certificate and an entry permit; except birds for immediate slaughter consigned directly to a licensed slaughtering establishment. For an entry permit, this number may be called during business hours: (801) 538-7164.

R58-6-4. Pullorum-Typhoid Rating for Imported Poultry.

A. No poultry, hatching eggs or baby chicks shall be brought, shipped, or otherwise introduced into the State of Utah by any person, individual or corporation that does not originate from flocks or hatcheries that have a Pullorum-Typhoid Clean rating given by the official state agency of the National Poultry Improvement Plan (NPIP) of the state or country of origin, or

B. Poultry entering Utah from a flock or hatchery which does not have a clean rating through NPIP certification must have been tested negative for Salmonella Pullorum, Mycoplasma gallisepticum (MG),M. synoviae (MS), M. meleagridis (MM), within the last 30 days.

R58-6-5. Boxes, Crates and Containers.

Poultry or chicken boxes, crates and containers shall be new or disinfected before being used to move replacement birds into the State of Utah, except birds of the same and known health status as the previous shipment, and identified with a label cooperating in National Poultry Improvement Plan.

R58-6-6. Import Permit.

No permit shall be issued for importation until the Utah Department of Agriculture and Food receives responsible and complete information from the consignor that the birds to be imported would not present a disease hazard to Utah flocks.

R58-6-7. Quarantine of Diseased Poultry.

The Commissioner may quarantine diseased poultry, whenever any infectious or contagious diseases have been identified. The quarantine notice shall be posted in a conspicuous place on the outside of the coops and premises.

A. The coops and surroundings must be maintained in a sanitary condition.

B. No live poultry shall under any circumstances be removed from the quarantined coop or premises, except under permit from the State Department of Agriculture and Food or its authorized representative.

C. All dead birds shall be destroyed by burning or by being placed in a pit properly constructed for disposal of dead birds.

D. The attendant shall wear rubber footwear which shall be disinfected in a disinfectant recognized by U.S. Department of Agriculture each time before leaving the infected coops.

E. All crates, utensils or other paraphernalia used around the infected coops shall be thoroughly cleaned and disinfected before being removed from the infected premises; except egg cases and those are to be handled in such manner as may be designated by the attending veterinarian.

F. Truck drivers are forbidden to enter quarantined premises personally or with trucks.

G. No visitors will be allowed on infected premises.

H. All droppings and litter shall be buried or burned or thoroughly disinfected before being removed from the premises.

I. Vaccination shall be done by or under the direction of an accredited veterinarian only.

J. The quarantine shall be in effect until withdrawn by the Commissioner of Agriculture and Food or his designated agent.

R58-6-8. Cleaning and Disinfecting Feed Bags, Crates, etc.

A. Bags used for poultry feeds, mashes, etc., shall, before being filled at the mill or mixing plant, be cleaned and disinfected. All filth or litter shall be removed from them and the bags then disinfected with a disinfectant recognized by United States Department of Agriculture 9 CFR 1, 147.25, January 1, 1997, edition.

B. Crates or other containers used for the transportation of poultry by any poultry producer or anyone buying and selling or otherwise transporting poultry shall be properly scraped, cleaned and disinfected with a disinfectant recognized by United States Department of Agriculture, 9 CFR 1, 147.25, January 1, 1997, edition, each time after being used.

R58-6-9. Handling or Disposal of Poultry Droppings and Litter.

A. Poultry houses and yards shall be maintained in a sanitary condition. All droppings and litter shall be cleaned regularly and disposed of either by hauling away and scattering over farm lands, or by burying or burning.

B. In case it is not practical to dispose of the droppings and litter regularly in the above manner, they shall be placed outside the coops and properly screened with fine mesh wire which will protect it from flies until it can be disposed of as provided in this rule.

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R58. Agriculture and Food, Animal Industry.
R58-7. Livestock Markets, Satellite Video Livestock Auction Market, Livestock Sales, Dealers, and Livestock Market Weighpersons.
R58-7-1. Authority.

A. Promulgated under authority of Section 4-30-3 and Section 4-2-2.

B. It is the intent of these rules to provide uniformity and fairness in the marketing of livestock within the state, whether sold through regularly established livestock markets or other types of sales.

R58-7-2. Definitions.

A. "Commissioner" means the commissioner of Agriculture and Food.

B. "Livestock" means cattle, domestic elk, swine, equines, sheep, goats, camelids, ratites, and bison.

C. "Representative" means a dealer licensed in Utah under Section 4-7-7 who is a resident of this state, or who is a representative of, or who in any capacity conducts business with a livestock auction market licensed under Section 4-30-4, which does business with an in state or out of state satellite video livestock auction market.

D. "Satellite video livestock auction market" means a place or establishment or business conducted or operated for compensation or profit as a public market where livestock or other agricultural related products located in this state are sold or offered for sale at a facility within or outside the state through the use of an electronically televised or recorded media presentation, which is, or can be exhibited at a public auction.

E. "Livestock market" means a public market place consisting of pens or other enclosures where all classes of livestock or poultry are received on consignment and kept for subsequent sale, either through public auction or private sale.

F. "Livestock dealer" means a person engaged in the business of purchasing livestock for immediate resale or interstate shipment for immediate resale.

R58-7-3. Livestock Markets.

A. Standards for Approved and Non-approved Markets. The operator of a livestock market shall maintain the following standards in order to obtain, retain or renew a livestock market license:

1. Follow procedures outlined in Section 4-30-4, and all state and federal laws and regulations pertaining to livestock health and movement.

2. Conduct all sales in compliance with the provisions of Utah laws and rules pertaining to livestock health and movement.

3. Furnish the Department with a schedule of sale days, which have been previously approved by the Commissioner of Agriculture and Food, giving the beginning hour.

4. Maintain records of animals in the market in accordance with United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, Brucellosis Eradication Uniform Methods and Rules, Part II, U, 2 to 4. Records must be retained for 2 years.

5. Maintain the identity of ownership of all animals as set forth in Section 4-24-20, and these rules. All test eligible females and breeding bulls two years of age and over shall be backtagged for individual identification as outlined in 9 CFR 71.18 71.19 and 9 CFR 79, January 1, 2001, edition. The tags are not to be removed in trading channels.

6. Permit authorized state or federal inspectors to review all phases of the livestock market operations including, but not limited, to records of origin and destination of livestock handled by the livestock market.

7. Provide adequate space for pens, alleyways, chutes, and sales ring; cover sales ring with a leak-proof roof.

8. Have floors in all pens, alleyways, chutes, and sales ring constructed in such a manner as to be easily cleaned and properly drained in all types of weather and to be easily maintained in a clean and sanitary condition.

9. Maintain all alleyways, pens, chutes, and sales rings in a clean and sanitary manner.

10. Furnish and maintain one or more chutes (in addition to the loading chute) at a convenient and usable place in a covered area, suitable for restraining, inspecting, examining, testing, tagging, branding and other treatments and procedures ordinarily required in providing livestock sanitary or health service at markets. Furnish personnel as required to assist Department or federal inspectors.

11. Provide specially designated pens or a provision for yarding for diseased animals infected with or exposed to brucellosis, tuberculosis, scabies, anaplasmosis, vesicular disease, pseudorabies, hog cholera, sheep foot rot, or other contagious or infectious disease.

12. Provide adequate facilities and service at a reasonable cost for cleaning and disinfecting cars, trucks and other vehicles which have been used to transport diseased animals as directed by the Department of Agriculture and Food or its authorized representative.

13. Do not release any diseased animal or animal exposed to any contagious, infectious or communicable disease from a livestock market until it has been approved for movement by the Department or its authorized representative.

14. Do not release any livestock from the market which have not complied with Utah laws and rules.

B. Additional Standards for Approved Markets.

1. Weigh each reactor individually and record reactor tag number, tattoo or other identifying marks on a separate weigh ticket, and record sales price per pound and net return after deducting expenses for required handling of such reactor. Restrict sale of all reactors to a slaughtering establishment where federal or state inspection is maintained.

2. Reimburse the Department monthly an amount equal to expenses incurred in providing a veterinarian at the livestock market.

3. Provide specially designated pens or a provision for yarding for animals classified as reactors, exposed, suspects or "S" branded.

4. Provide suitable laboratory space at the market as agreed between the market and the livestock market veterinarian for the conducting of brucellosis and other necessary tests.

C. Veterinary Medical Services. These services, fees, and collection procedures will be outlined and negotiated between the Department of Agriculture and Food, Livestock Auctions, and Veterinarians in contract agreements signed by each party.

Any procedures, payments fees and collection methods done outside the contract terms will be worked out between the livestock market and the veterinarian.

D. Denial, Suspension or Cancellation of Registration. The Department may, after due notice and opportunity for a hearing to the livestock market involved, deny an application for registration, or suspend or cancel the registration when the Department is satisfied that the market has:

1. Violated state statutes or rules governing the interstate or intrastate movement, shipment or transportation of livestock, or

2. Made false or misleading statements in their application for licensing, or false or misleading statements as to the health or physical conditions of livestock regarding official test results or status of the herd of origin, or

3. Knowingly sold for dairy or breeding purposes cattle which were affected with a communicable disease, or

4. Demonstrated their inability or unwillingness to carry out the record keeping requirements contained in this rule, or

5. Failed to comply with any law or rule pertaining to livestock health or movement, or

6. Operated as a livestock market without proper licensing.

E. Relating to temporary livestock market:

Temporary Livestock Market Licensees shall not be required to abide by the provisions in R58-7-3A (1,4,5,7-14), R58-7-3B (1-4), and R58-7-3C.

R58-7-4. Temporary Livestock Sale License.

A. A temporary livestock sales license shall be required for each sale where:

1. Livestock is offered for public bidding and sold on a yardage, commission or percentage basis.

2. Sales are conducted by or for a person at which livestock owned by such person are sold on his own premises, see R58-7-3 and 4.

3. Sales are conducted for the purpose of liquidation of livestock by a farmer, dairyman, livestock breeder or feeder.

4. Sales conducted by non-profit breed or livestock associations or clubs:

a. It is not the intent of this rule to require a bond from non-profit breed or livestock associations or clubs, or from liquidation sales if they conduct sales themselves and do not assume any financial responsibility between the seller and the buyer. However, if such sales are conducted by outside or professional management a license and either a bond, trust fund agreement or letter of credit will be required.

5. Other sales may be approved by the Department of Agriculture and Food.

B. A temporary license shall not be required for:

1. Sales conducted by Future Farmers of America or 4H Club groups.

2. Sales conducted in conjunction with state, county, or private fairs.

C. The Department shall be notified 10 days prior to all such sales.

D. A temporary livestock sales license shall be issued when the Department finds:

1. That an application as approved by the Department has been received, along with the payment of a $10.00 license fee.

2. That the applicant has filed with the Department where applicable a bond as required by the Department or in accordance with the Packers and Stockyards Act (7 U.S.C. 181 et seq.), except that a letter of credit or a trust fund agreement, as approved by the Department, may replace the bonding requirements.

R58-7-5. Dealers.

A. Dealer Licensing and Bonding:

No person shall operate as a livestock dealer in the state without a license and bond in accordance with Title 4, Chapter 7.

1. Upon receipt of a proper application and payment of a license fee in the amount of $25.00 and meeting current bonding requirements the Department will issue a license allowing the applicant to operate as a livestock dealer through December 31 of each year.

2. The Department, after due notice and opportunity for hearing to the dealer involved, may deny an application for license, suspend or cancel the license when the Department is satisfied that the applicant or dealer has:

a. Violated state statutes or rules governing the interstate or intrastate movement, shipment, or transportation of livestock, or

b. Made false or misleading statements in their application for licensing, or false or misleading statements as to the health or physical conditions of livestock regarding official test results or status of the herd of origin, or

c. Knowingly sold for dairy or breeding purposes cattle which were affected with a communicable disease, or

d. Demonstrated their inability or unwillingness to carry out the record keeping requirements contained in this rule, or

e. Failed to comply with any law or rule pertaining to livestock health or movement, or

f. Operated as a dealer without meeting proper licensing and bonding requirements.

B. Record Keeping.

1. All livestock dealers must keep adequate records to allow accurate trace back of all livestock to the prior owner Section 4-7-9.

2. Dealers shall permit the Department or its authorized representative to review all phases of the livestock dealer operations including, but not limited to, records of origin and destination of livestock handled by the livestock dealer.

3. Dealers shall retain above records for a period of two years.

R58-7-6. Responsibilities of a Bonded and Licensed Weighperson.

A. Weighperson operator to be competent, licensed and bonded.

1. Stockyard owner, market agencies, and dealers shall employ only competent, licensed and bonded persons of good character and known integrity to operate scales for weighing livestock for the purpose of purchase or sale. Any person found to be operating scales incorrectly, carelessly, in violation of instructions, or in such manner as to favor or injure any party or agency through incorrect weighing or incorrect weight recording shall be removed from his weighing duties.

2. The primary responsibility of a weigher is to determine and accurately record the weight of a livestock draft without prejudice or favor to any person or agency and without regard for livestock ownership, price condition, fill, shrink, or other considerations. A weigher shall not permit the representations or attitudes of any persons or agencies to influence his judgment or action in performing his duties.

3. Unused scale tickets, or those which are partially executed but without a printed weight value, shall not be left exposed or accessible to unauthorized personnel. All such tickets shall be kept under lock when the weigher is not at his duty station.

4. Accurate weighing and correct weight recording require that a weigher shall not permit the operations to be hurried to the extent that inaccurate weights or incorrect weight records may result. Each draft of livestock must be weighed accurately to the nearest minimum weight value that can be indicated or recorded. Manual operations connected with balancing, weighing, and recording shall be performed with the care necessary to prevent damage to the accurately machined and adjusted part of weigh-beams, poses, and printing devices.

5. Livestock owners, buyers, or others having legitimate interest in a livestock draft must be permitted to observe the balancing, weighing, and recording procedures, and a weigher shall not deny them that right or withhold from them any information pertaining to the weight of that draft. He shall check the zero balance of the scale or reweigh a draft of livestock when requested by such parties.

B. Balancing the empty scale.

1. The empty scale shall be balanced each day before weighing begins, and maintained in correct balance while weighing operations continue. The zero balance shall be verified at intervals of not more than 15 drafts or 15 minutes, whichever is completed first. In addition, the zero balance of the scale shall be verified whenever a weigher resumes weighing duties after an absence from the scale and also whenever a load exceeding half the scale capacity or 10,000 pounds (whichever is less) has been weighed and is followed by a load of less than 1,000 pounds, verification to occur before the weighing of the load of less than 1,000 pounds.

2. The time at which the empty scale is balanced or its zero balance verified shall be recorded on scale tickets or other permanent records. Balance tickets must be filed with other scale tickets issued on that date.

3. Before balancing the empty scale, the weigher shall assure himself that the scale gates are closed and that no persons or animals are on the scale platform or in contact with the stock rack, gates, or platform. If the scale is balanced with persons on the scale platform, the zero balance shall be verified whenever there is a change in such persons. When the scale is properly balanced and ready for weighing, the weigher shall so indicate by an appropriate signal.

C. Weighing the load.

1. Before weighing a draft of livestock, the weigher shall assure himself that the entire draft is on the scale platform with the gates closed and that no persons or animals off the scale are in contact with the platform, gates or stock rack.

D. Sale of livestock by weight.

All livestock sold by weight through a satellite video auction market must be sold based on the weight of the livestock on the day of delivery. All livestock sold by weight must be weighed on scales that have been tested and inspected by the Department of Weights and Measures in the manner prescribed by law.

R58-7-7. Satellite Video Livestock Auction Market.

1. Before entering into business as or with a satellite video livestock auction market and annually, on or before January 1, each market or representative shall file an application for a license to transact business as or with a satellite video livestock auction market with the commissioner on a form prescribed by the commissioner. The application must show:

a. the nature of the business for which a license is desired;

b. the name of the representative applying for the license;

c. the name and address of the proposed satellite video auction or the name and address of the satellite video auction the representative proposes to transact business with; and

d. other information the commissioner may require as listed in Subsection 4-7-6.

2. The application for a license or for a renewal for a license must be accompanied by:

a. a license fee in accordance with Section 4-30-4, determined by the department pursuant to Subsection 4-2-2(2).

b. evidence of proper security bonding as required in Subsection 4-30-4(3) for the satellite video auction and Section 4-7-7 for the representative.

c. a schedule of fees and commissions that will be charged to owners, sellers, or their agents; and

d. other information the commissioner may require as listed in Section 4-7-6.

3. Each satellite video auction will be considered as a temporary livestock sale unless licensed under this chapter as a satellite video auction market. Sales operated by a representative will be required to make application as designated in R58-7-4.

4. A copy of each and any contract between the representative and the satellite video auction market with which the representative proposes to transact business or a contract with the proposed satellite video auction market must be supplied to the department.

The contract must include a provision authorizing the commissioner or the commissioners designee to have access to the books, papers, accounts, financial records held by financial institutions, accountants or other sources; and other documents relating to the activities of the satellite video livestock market and requiring the satellite video auction market to make such documents reasonably available upon the request of the commissioner or the commissioners designee. If the contract between a representative and the satellite video auction market is terminated, rescinded, breached, or materially altered, the representative and the satellite video auction market shall immediately notify the commissioner. Failure to notify will be deemed failure to keep and maintain suitable records and be deemed to be a false entry or statement of fact in application filed with the department. (Section 4-7-11.)

R58-7-8. Livestock Market Committee.

A. Hearing on License Application; Notice of Hearing.

1. Upon filing of an application as a satellite video auction livestock market, the chairman of the Department of Agriculture and Food's Livestock Market Committee shall set a time and place for a hearing to review the application and determine whether a license will be issued.

2. Upon filing of an application as a representative of a satellite video auction market, the chairman of the Department of Agriculture and Food's Livestock Market Committee may elect to hold a hearing to review the application and determine whether a license will be issued.

B. Guidelines delineated for decision on application shall be in accordance with 4-30-6 and shall apply to the livestock auction market and the satellite video livestock auction market.

KEY: livestock
February 12, 2002 **4-2-2**
Notice of Continuation October 19, 2000 **4-30-3**

R58. Agriculture and Food, Animal Industry.
R58-8. Testing and Vaccination of Bovine Livestock for Brucellosis Control.
R58-8-1. Authority.

Promulgated under Subsection 4-2-2(1)(j) and Section 4-31-16.

R58-8-2. Requirements.

Before bovine livestock change ownership, testing and/or vaccination for brucellosis must be verified and/or the bovine livestock must meet the applicable animal health requirements. The livestock operation shall show proof of testing and/or vaccination to a representative of the Utah Department of Agriculture and Food. This proof shall be noted and a document made available to accompany the livestock as they are moved. In the event the foregoing requirements have not been met, the cattle shall not be moved.

KEY: disease control
1987 **4-31-16**
Notice of Continuation February 13, 2002 **4-2-2(1)(j)**

R58. Agriculture and Food, Animal Industry.
R58-18. Elk Farming.
R58-18-1. Authority.

Regulations governing elk farming promulgated under authority of 4-39-106.

R58-18-2. Definitions.

In addition to the definitions found in Sections 4-1-8, 4-7-3, 4-24-2, 4-32-3 and 4-39-102, the following terms are defined for purposes of this rule:

(1) "Raised" as used in the act means any possession of domestic elk for any purpose other than hunting.

(2) "Separate location" as used in Subsection 4-39-203(5) means any facility that may be separated by two distinct perimeter fences, not more than 10 miles apart, owned by the same person.

(3) "Domestic elk" as used in this chapter, in addition to 4-39-102, means any elk which has been born inside of, and has spent its entire life within captivity.

(4) "Quarantine Facility" means a confined area where selected elk can be secured, contained and isolated from all other elk and livestock.

(5) "Secure Enclosure" means a perimeter fence or barrier that is so constructed as to prevent domestic elk from escaping into the wild or the ingress of native wildlife into the facility.

(6) "Elk" as used in this chapter means North American Wapiti or Cervus Elaphus Canadensis.

(7) "Affected herd" means a herd of Cervidae where an animal has been diagnosed with Chronic Wasting Disease (CWD) caused by protease resistant prion protein (PrP), and confirmed by means of an approved test, within the previous 5 years.

(8) "Trace Back Herd/Source Herd" means any herd of Cervidae where an animal affected with CWD has resided up to 36 months prior to death.

(9) "Trace Forward Herd" means any herd of Cervidae which has received animals that originated from a herd where CWD has been diagnosed, in the previous 36 months prior to the death of the affected (index) animal.

(10) "Adjacent Herd" means a herd of Cervidae occupying premises that border an affected herd, including herds separated by fences, roads or streams, herds occupying a premise where CWD was previously diagnosed, and herds that share the same license as the affected or source herd, even if separate records are maintained and no commingling has taken place.

(11) "Approved test" means approved tests for CWD surveillance shall be those laboratory or diagnostic tests accepted nationally by USDA and approved by the state veterinarian.

(12) "Herd of Origin" means the herd, which an imported animal has resided in, or does reside in, prior to importation.

(13) "Destination Herd" means the intended herd of residence, which will be occupied by the animal which is proposed for importation.

R58-18-3. Application and Licensing Process.

(1) Each applicant for a license shall submit a signed, complete, accurate and legible application on a department issued form.

(2) In addition to the application, a general plot plan should be submitted showing the location of the proposed farm in conjunction with roads, towns, etc. in the immediate area.

(3) A facility number shall be assigned to an elk farm at the time a completed application is received at the Department of Agriculture and Food building.

(4) A complete facility inspection and approval shall be conducted prior to the issuing of a license or entry of elk to any facility. This inspection shall be made by an approved Department of Agriculture and Food employee and Division of Wildlife Resource employee. It shall be the responsibility of the applicant to request this inspection at least 72 hours in advance.

(5) Upon receipt of an application, inspection and approval of the facility and completion of the facility approval form and receipt of the license fee, a license will be issued.

(6) All licenses expire on July 1st in the year following the year of issuance.

(7) Elk may enter into the facility only after a license is issued by the department and received by the applicant.

R58-18-4. License Renewal.

(1) Each elk farm must make renewal application to the department on the prescribed form no later than April 30th indicating its desire to continue as an elk farm. This application shall be accompanied by the required fee.

(2) Any license renewal application received after April 30th will have a late fee assessed.

(3) Any license received after July 1st is delinquent and any animals on the farm will be quarantined until due process of law against the current owner has occurred. This may result in revocation of the license, loss of the facility number, closure of the facility and or removal of the elk from the premise.

(4) Prior to renewal of the license, the facility will again be inspected by a Utah Department of Agriculture and Food employee. Documentation that all fencing and facility requirements are met is required.

(5) An inventory check will be completed of all elk on the premise, and a visual general health check of all animals will be made. Documentation showing that genetic purity has been maintained throughout the year is also required for annual license renewal.

(6) The licensee shall provide a copy of the inventory sheet to the inspector at the time of inspection.

R58-18-5. Facilities.

(1) All perimeter fences and gates shall meet the minimum standard as defined in Section 4-39-201.

(2) Internal handling facilities shall be capable of humanely restraining an individual animal for the applying or reading of any animal identification, the taking of blood or tissue samples, or conducting other required testing by an inspector or veterinarian. Any such restraint shall be properly constructed to protect inspection personnel while handling the animals. Minimum requirements include a working pen, an alley way and a restraining chute.

(3) The licensee shall provide an isolation or quarantine holding facility which is adequate to contain the animals and provide proper feed, water and other care necessary for the physical well being of the animal(s) for the period of time

necessary to separate the animal from other animals on the farm.

(4) Each location of a licensed facility with separate perimeter fences must have its own separate loading facility.

R58-18-6. Records.

(1) Licensed elk farms shall maintain accurate and legible office records showing the inventory of all elk on the facility. The inventory record of each animal shall include:

(a) Name and address of agent(s) which the elk was purchased from

(b) Identification number (tattoo or chip)

(c) Age

(d) Sex

(e) Date of purchase or birth

(f) Date of death or change of ownership

The inventory sheet may be one that is either provided by the department or may be a personal design of similar format.

(2) Any animal born on the property or transported into a facility must be added to the inventory sheet within seven days.

(3) Any elk purchased must be shown on the inventory sheet within 30 days after acquisition, including source.

R58-18-7. Genetic Purity.

(1) All animals entering Utah must have written evidence of genetic purity. Written evidence of genetic purity will include one of the following:

(a) Test charts from an approved lab that have run either a:

(i) Blood genetic purity test or

(ii) DNA genetic purity test.

(b) Registration papers from the North American Elk Breeders Association.

(c) Herd purity certification papers issued by another state agency.

(2) Genetic purity records must be kept on file and presented to the inspector at the time elk are brought into the state and also each year during the license renewal process.

(3) Any elk identified as having red deer genetic influence shall be destroyed, or immediately removed from the state.

R58-18-8. Acquisition of Elk.

(1) Only domesticated elk will be allowed to enter and be kept on any elk farm in Utah.

(2) All new elk brought into a facility shall be held in a quarantine facility until a livestock inspector has inspected the animal(s) to verify that all health, identification and genetic purity requirements have been met. New animals may not co-mingle with any elk already on the premise until this verification is completed by the livestock inspector.

R58-18-9. Identification.

(1) All elk shall be permanently identified with either a tattoo or micro chip.

(2) If the identification method chosen to use is the micro chip, a reader must be made available, by the owner, to the inspector at the time of any inspection to verify chip number. The chip shall be placed in the right ear.

(3) If tattooing is the chosen method of identification, each elk shall bear a tattoo number consisting of the following:

(a) UT (indicating Utah) followed by a number assigned by the department (indicating the facility number of the elk farm) and

(b) Any alphanumeric combination of letters or numbers consisting of not less than 3 digits, indicating the individual animal number herein referred to as the "ID number".

Example:

UTxxx

ID number (001)

(c) Each elk shall be tattooed on either the right peri-anal hairless area beside the tail or in the right ear.

(d) Each alphanumeric character must be at least 3/8 inch high.

(e) Each newly purchased elk will not need to be retattooed or chipped if they already have this type of identification.

(f) Any purchased elk not already identified shall be tattooed or chipped within 30 days after arriving on the farm.

(g) All calves must be tattooed within 15 days after weaning or in no case later than January 1st.

(4) In addition to one of the two above mentioned identification methods, each elk shall be identified by the official USDA ear tag or other ear tag approved by the director.

R58-18-10. Inspections.

(1) All facilities must be inspected within 60 days before a license or the renewal of an existing license is issued. It is the responsibility of the applicant to arrange for an appointment with the department for such inspection, giving the department ample time to respond to such a request.

(2) All elk must be inspected for inventory purposes within 60 days before a license renewal can be issued.

(3) All elk must be inspected when any change of ownership, moving out of state, leaving the facility, slaughter or selling of elk products, such as antlers, occurs except as indicated in (f) below.

(a) It is the responsibility of the licensee to arrange for any inspection with the local state livestock inspector.

(b) A minimum of 48 hours advance notice shall be given to the inspector.

(c) When inspected, the licensee or his representative shall make available such records as will certify ownership, genetic purity, and animal health.

(d) All elk to be inspected shall be properly contained in facilities adequate to confine each individual animal for proper inspection.

(e) Animals shall be inspected before being loaded or moved outside the facility.

(f) Animals moving from one perimeter fence to another within the facility may move directly from one site to another site without a brand inspection, but must be accompanied with a copy of the facility license.

(4) Any elk purchased or brought into the facility from an out-of-state source shall be inspected upon arrival at a licensed farm before being released into an area inhabited by other elk. All requirements of R58-18-10(3) above shall apply to the inspection of such animals.

(5) A Utah Brand Inspection Certificate shall accompany any shipment of elk or elk products, including velveted antlers,

which are to be moved from a Utah elk farm. Shed antlers are excluded from needing an inspection. Proof of ownership and proper health papers shall accompany all interstate movement of elk to a Utah destination.

(6) Proof of ownership may include:

(a) A brand inspection certificate issued by another state.

(b) A purchase invoice from a licensed public livestock market showing individual animal identification.

(c) Court orders.

(d) Registration papers showing individual animal identification.

(e) A duly executed bill (notarized) of sale.

R58-18-11. Health Rules.

(1) Prior to the importation of elk, whether by live animals, gametes, eggs, sperm or other genetic material into the State of Utah, the importing party must obtain an entry permit from the Utah State Veterinarians office. (801-538-7164)

(a) An entry permit number shall be issued only if the destination is licensed as an elk farm by the Utah Department of Agriculture and Food.

(b) The entry permit number for Utah shall be obtained by the local veterinarian conducting the official health inspection by contacting the Utah Department of Agriculture and Food permit desk at 80l-538-7164.

(2) All elk imported into Utah must be examined by an accredited veterinarian prior to importation and must be accompanied by a valid certificate of veterinary inspection, health certificate, certifying a disease free status.

(a) Minimum specific disease testing results or health statements must be included on the certificate of veterinary inspection.

(b) A negative tuberculosis test must be completed within 60 days prior to entry into the state. A retest is also optional at the discretion of the state veterinarian.

(c) If animals do not originate from a tuberculosis accredited, qualified or monitored herd, they may be imported only if accompanied by a certificate stating that such domestic cervidae have been classified negative to two official tuberculosis tests that were conducted not less than 90 days apart, that the second test was conducted within 60 days prior to the date of movement. The test eligible age is six months or older, or less than six months of age if not accompanied by a negative testing dam.

(d) All elk being imported shall test negative for brucellosis if six months of age or older, by at least two types of official USDA brucellosis tests, one of which shall be the rivanol test.

(e) The certificate of veterinary inspection must also include the following signed statement: "To the best of my knowledge the elk listed herein are not infected with Johne's Disease (Paratuberculosis), Chronic Wasting Disease or Malignant Catarrhal Fever and have never been east of the 100 degree meridian."

(f) The certificate of veterinary inspection shall also contain the name and address of the shipper and receiver, the number, sex, age and any individual identification on each animal.

(3) Additional disease testing may be required at the discretion of the state veterinarian prior to importation or when there is reason to believe other disease(s), or parasites are present, or that some other health concerns are present.

(4) Imported or existing elk may be required to be quarantined at an elk farm if the state veterinarian determines the need for and the length of such a quarantine.

(5) Any movement of elk outside a licensed elk farm shall comply with standards as provided in the document entitled: "Uniform Methods and Rules (UM and R)", as approved and published by the USDA. The documents, entitled: "Tuberculosis Eradication in Cervidae, Uniform Methods and Rules", the May 15, 1994 edition, and "Brucellosis Eradication, Uniform Methods and Rules", the May 6, 1992 edition as published by the USDA, are hereby incorporated by reference into this rule. These are the standards for tuberculosis and brucellosis eradication in domestic cervidae. Copies of the methods and rules are on file and available for public inspection at the Division of Animal Industry, Department of Agriculture and Food offices located at 350 North Redwood Road, Salt Lake City, Utah.

(6) Treatment of all elk for internal and external parasites is required within 30 days prior to entry.

(7) All elk imported into Utah must originate from a state or province, which requires that all suspected or confirmed cases of Chronic Wasting Disease, be reported to the State Veterinarian or regulatory authority. The state or province of origin must have the authority to quarantine source herds and herds affected with or exposed to CWD.

(8) Elk imported into Utah shall only originate from states, which have implemented a Program for Surveillance, Control, and Eradication of CWD in Domestic Elk. All elk imported to Utah must originate from herds that are participating in a CWD surveillance program. Animals will be accepted for movement only if epidemiology based on vertical and horizontal transmission is in place. The number of years under a recognized CWD surveillance program, completed by the herd of origin, shall be stated on the Certificate of Veterinary Inspection. The number of years of CWD surveillance completed by the herd of origin shall be at least equal to the number of years of CWD surveillance completed by the destination herd, until such time as both herds have been under surveillance for at least three years. Beginning July 1, 2005, only elk from herds under surveillance for at least three years will qualify, regarding CWD, for entrance into Utah.

(9) No elk originating from a CWD affected herd, trace back herd/ source herd, trace forward herd, or adjacent herd, may be imported to Utah.

(10) Elk semen, eggs, or gametes, require a Certificate of Veterinary Inspection verifying the individual source animal has been tested for genetic purity for Rocky Mountain Elk genes and certifying that it has never resided on a premise where Chronic Wasting Disease has been identified or traced. An import Entry Permit obtained by the issuing veterinarian must be listed on the Certificate of Veterinary Inspection. Permits may be obtained by calling 801-538-7164 during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday.

R58-18-12. Chronic Wasting Disease Surveillance.

(1) The owner, veterinarian, or inspector of any elk which

is suspected or confirmed to be affected with Chronic Wasting Disease (CWD) in Utah is required to report that finding to the State Veterinarian.

(2) Each elk farm, licensed in Utah, shall be required to submit the brain stem (obex portion of the medulla) of any elk over 16 months of age that dies or is otherwise slaughtered or destroyed, for testing for Chronic Wasting Disease (CWD) by an official test. The samples shall be collected by an accredited veterinarian, or an approved laboratory, or person trained and approved by the state veterinarian.

(3) Each hunting park, licensed in Utah, shall be required to submit the brain stem (obex portion of the medulla) of all elk over 16 months of age that die; and the brain stem from 50% of all elk from each herd of origin that are otherwise slaughtered, killed, or destroyed, for testing for Chronic Wasting Disease with an official test. The samples shall be collected by an accredited veterinarian, approved laboratory, or person trained and approved by the State Veterinarian.

(4) The CWD surveillance samples from elk residing on licensed elk farms and elk hunting parks shall be collected and preserved in formalin within 48 hours following the death of the animal, and submitted within 7 days, to a laboratory approved by the State Veterinarian. Training of approved personnel shall include collection, handling, shipping, and identification of specimens for submission.

(5) Laboratory fees and expenses incurred for collection and shipping of samples shall be the responsibility of the participating elk farm or hunting park.

(6) The disposition of CWD affected herds in Utah shall be determined by the State Veterinarian.

KEY: inspections
October 17, 2000 **4-39-106**
Notice of Continuation February 13, 2002

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

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

R58-19-2. Definition of Terms.

(A) An Emergency Order means a written action by the Division, which is issued to a person, as a result of information that is known by the Division, which identifies an immediate and significant danger to the public's health, animal health, safety or welfare, and warrants prompt action pursuant to Section 63-46b-20.

Emergency orders include: "quarantine", "seized", "Utah Inspection and Condemned", "sealed", "reject", "retain", "denatured", "detained", and "suspect", and may be issued when division action is warranted to stop the sale of a product, or halt an immediate condition or service from occurring, pursuant to Sections 4-32-7, 4-32-16, 4-32-17, 4-31-17, 4-39-107, and 9 CFR-III 303.1 through 381.207.

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

R58-19-3. Emergency Order.

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

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

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

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

(3) references to statutes or administrative rules violated,

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

(5) the signature of the agency representative, and

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

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

R58-19-4. Citation.

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

The citation will include the following information:

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

(2) references to the statutes or rules violated,

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

(4) a penalty or fine amount,

(5) the signature of the agency representative,

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

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

Fine or penalty amounts will be set by the department or the division, under the direction of the commissioner, for amounts up to $5,000 per violation, or if the citation involves a criminal proceeding, the person may be found guilty of a class B misdemeanor. In accordance with Section 4-2-15, fine or penalty amounts shall be determined according to the following:

TABLE
Penalty Amounts

1	Citation per violation	$100
2	Citation per head	$ 2

(If not paid within 15 days, 2 times citation amount)
(If not paid within 30 days, 4 times citation amount)

R58-19-5. Request for Hearing.

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

KEY: agricultural law
February 12, 2002 **4-2-2(j)**

R70. Agriculture and Food, Regulatory Services.
R70-320. Minimum Standards for Milk for Manufacturing Purposes, its Production and Processing.
R70-320-1. Authority.

A. Promulgated Under Authority of Subsection 4-2-2(1)(j) and Section 4-3-2.

B. Scope: It is the intent of these rules to encourage the sanitary production of milk, to promote the sanitary processing of milk for manufacturing purposes.

R70-320-2. General.

A. The Commissioner of Agriculture and Food shall administer the provisions of these rules which are:

1. To establish and promulgate minimum standards for milk for manufacturing purposes, its production, transportation, grading, use, processing, and the packaging, labeling and storage of dairy products made therefrom.

2. To inspect dairy farms and dairy plants, to certify dairy farms for the production and sale of milk for manufacturing purposes and to license dairy plants to handle and process milk for manufacturing purposes, in conformity with minimum standards and specifications prescribed by such rules as may be issued hereunder in effectuation of the intent hereof.

3. To require the keeping of appropriate books and records by plants licensed hereunder.

4. To license qualified milk graders and bulk milk collectors.

B. The Utah Commissioner of Agriculture and Food may for good cause, after notice and opportunity for hearing, suspend or revoke certification and licenses issued hereunder.

C. No person, firm, or corporation shall produce, sell, offer for sale, or process milk for the manufacture of human food except in accordance with the provisions of these rules issued pursuant hereunto.

D. Violation of any portion of these rules may result in civil or criminal action, pursuant to Section 4-2-2.

E. All manufacturing dairy plants shall furnish the Department with a current list of their producers semi-annually. These lists shall be received no later than January 15th and July 15th of the current year.

R70-320-3. Definitions.

A. Definitions. Words used in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

1. Regulatory agency. The Utah Commissioner of Agriculture and Food or his authorized representative is authorized by law to administer this rule.

2. Department. The Utah Department of Agriculture and Food.

3. License. A license issued under this Regulation by the Department.

4. Fieldman. A person qualified and trained in the sanitary methods of production and handling of milk as set forth herein, and generally employed by a processing or manufacturing plant for the purpose of dairy farm inspections and quality control work.

5. Compliance Officer. An employee of the Department qualified, trained, and authorized to perform dairy farm or plant inspections, and raw milk grading.

6. Milk Grader. A person licensed by the Utah Department of Agriculture and Food who is qualified and trained for the grading of raw milk.

7. Producer. The person or persons who exercise control over the production of the milk delivered to a processing plant or receiving station and those who receive payment for this product. A "new producer" is one who has only recently entered into the production of milk for the market. A "transfer producer" is one who has been shipping milk to one plant and transfers his shipment to another plant.

8. Milk hauler. Any person who transports raw milk and/or raw milk products from a dairy farm, milk plant, receiving or transfer station.

9. Farm Tank. A tank used to cool and/or store milk prior to transportation to the processing plant.

10. Transportation Tank and Bulk Tank. Tanks used to transport milk from a farm to a processing plant.

11. Dairy Farm or Farm. A place or premise where one or more milking cows are kept, a part or all of the milk produced thereon being delivered, sold, or offered for sale to a plant for manufacturing purposes.

12. Dairy Plant or Plant. Any place, premise, or establishment where milk or dairy products are received or handled for processing or manufacturing and/or prepared for distribution. When "plant" is used in connection with minimum specifications for plants or licensing of plants, it means only those plants that manufacture, process and/or distribute dairy products.

13. Milk. The normal lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows. The word "milk" used herein includes only milk for manufacturing purposes.

14. Milk for manufacturing purposes. Milk produced for processing and manufacturing into products for human consumption that meets the requirements of this rule.

15. Acceptable Milk. Milk that is produced under the requirements as outlined in this rule.

16. Probational Milk. Milk that may not be produced under the requirements as outlined in this rule and that may be accepted by plants for specific time periods.

17. Reject Milk. Milk that does not meet the requirements of this rule.

18. Suspended Milk. All of a producer's milk suspended from the market by the provisions of this rule.

19. Dairy Products. Butter, cheese (natural or processed), dry whole milk, nonfat dry milk, dry buttermilk, dry whey, evaporated (plain or sweetened), and such other products, for human consumption, as may be otherwise designated.

20. Farm Certification. Certification by a compliance officer that a producer's herd, milking facility and housing, milk procedure, cooling, milkhouse or milk room, utensils and equipment and water supply have been found to meet the applicable requirements of this rule.

21. Official Methods. Official Methods of Analysis of the Association of Official Analytical Chemists.

22. Standard Methods. Standard Methods for the Examination of Dairy Products.

23. 3-A Sanitary Standards. The standards for dairy

equipment formulated by the 3-A Sanitary Standards Committees representing the International Association of Milk and Food Sanitarians, the United States Public Health Service, and the Dairy Industry Committee.

24. C-I-P or Cleaned-in-Place. The procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned in place by circulation.

25. Permit. A document issued by the Department in order to sell milk and milk products.

R70-320-4. Milk Permits.

By October 15, 1990, farms producing and selling milk for manufacturing purposes shall apply for a permit.

1. Permits shall be required for the sale of milk for manufacturing purposes.

2. Only one permit shall be issued per facility.

3. Farm permits shall be effective from the date of issuance unless suspended or revoked by the Department.

R70-320-5. Farm Inspection.

A. Each dairy farm operated by a producer of milk for manufacturing purposes shall be inspected initially and on any change of market by a compliance officer and shall have a passing score before the first milk is shipped. All dairy farms producing milk for manufacturing purposes shall be inspected no less than once in each six month period by a compliance officer.

B. Producers who cannot produce milk of wholesome sanitary quality will be suspended. Producers who are not in substantial compliance with Section R70-320-12 relating to requirements for a farm producing milk for manufacturing will be re-inspected after an appropriate time for correction of deficiencies. If the farm does not then meet the requirements for farms producing milk for manufacturing, the producer permit to sell milk for manufacturing from that farm shall be suspended until such time as the farm receives an acceptable score. The producer will be charged for the time and mileage expended by the department for any subsequent visits required.

R70-320-6. Minimum Quality Standards for Milk for Manufacturing Purposes.

A. Basis. The classification of raw milk for manufacturing purposes shall be based on sight and odor and quality control tests for sediment content, bacterial estimate and somatic cell.

B. Sight and odor. The odor of acceptable raw milk shall be fresh and sweet. The milk shall be free from objectionable off-odors that would adversely affect the finished product, and it shall not show any abnormal condition such as curdled, ropy, bloody, or mastitis condition as determined by an approved milk grader.

C. Sediment content classification. Milk in farm bulk tanks shall be classified for sediment content as follows:

TABLE
SEDIMENT CONTENT

Sediment Content Classification	Milk in farm bulk tanks Mixed sample, 0.40 in. diameter disc or equivalent
No. 1 (acceptable)	Not to exceed 0.50 mg. equivalent
No. 2 (acceptable)	Not to exceed 1.50 mg. equivalent
No. 3 (probational)	Not to exceed 2.50 mg. equivalent
No. 4 (reject)	Over 2.50 mg. equivalent

Sediment content based on comparison with applicable charts of Sediment Standards prepared by the United States Department of Agriculture.

1. Method of Testing. Methods for determining sediment content of milk shall be those described in the current edition of Standard Methods for the examination of dairy products.

2. Frequency of tests. At least once each month a sample shall be taken from each farm bulk tank and at irregular intervals.

3. Acceptance or rejection of milk. If the sediment disc is classified as No. 1, No. 2, or No. 3, the producer's milk may be accepted. If the sediment disc is classified as No. 4, the milk shall be rejected. If the shipment of milk is co-mingled with other milk in a transport tank, the next shipment shall not be accepted until its quality has been determined at the farm before being picked up; however, if the person making the test is unable to get to the farm before the next shipment, it may be accepted but no further shipments shall be accepted unless the milk meets the requirements of No. 3 or better. In the case of milk classified as No. 3 or No. 4, the producer shall be notified immediately and the next shipment shall be tested.

4. Retests. On tests of the next shipment, milk classified as No. 1, No. 2, or No. 3 shall be accepted, but No. 4 milk shall be rejected. Retests of bulk milk classified as No. 4 shall be made at the farm before pickup. The producers of No. 3 or No. 4 milk shall be notified immediately and the next shipment tested. This procedure of retesting successive and accepting probational (No. 3) milk and rejecting No. 4 milk may be continued for a period, not to exceed ten calendar days. If at the end of this time, the producer's milk does not meet the acceptable sediment content classification (No. 1 or No. 2) it shall be suspended from the market.

D. Bacterial estimated classification. Milk shall be classified for bacterial estimate by one of the listed tests of the current standard methods.

TABLE

Bacterial estimate classification	Direct microscopic clump count, standard plate count or loop method
Acceptable	Not over 500,000 per ml.
Undergrade (probation 4 weeks)	Over 500,000 per ml

1. Method of testing. Methods for determining the bacterial estimate of milk shall be those described in the current edition of Standard Methods and the current edition of the Official Methods of the Analysis of the Association of Official Analytical Chemists or other methods approved by the Department.

2. Frequency of tests. At least once a month at irregular intervals, a mixed sample of each producer's milk shall be tested.

3. Acceptance of milk. If the sample of milk is classified as No. 1, the producer's milk may be accepted without qualification. If the sample is classified as undergrade, probational, the producer's milk may be accepted for a temporary period of four weeks. The producer of undergrade

milk shall be notified immediately.

4. Retests. Additional samples shall be tested and classified at least weekly, and the producer shall be notified immediately of the results. This procedure of testing at least weekly and accepting undergrade milk may be continued for a period not exceeding four weeks. If at the end of this time the producer's milk does not meet the acceptable bacterial estimate requirements (No. 1 or No. 2) it shall be suspended from market.

E. Abnormal Milk. The Wisconsin Mastitis Test may be used as a screening test. A test of 18 mm or higher shall be considered to indicate abnormal milk and shall require confirmation by the Direct Microscopic Somatic Cell Count Method or an equivalent method according to the current edition of standard methods.

Somatic Cell Count: Samples exceeding 18 mm WMT to be confirmed by DMSCC or acceptable tests. Not to exceed 750,000 per ml.

1. Frequency of tests. At least four times in each six month period, at irregular intervals, a sample of each producer's milk shall be tested.

2. Notification to the department, written notice to the producer and a farm inspection are required whenever two of the last four somatic cell counts exceed the standard.

3. Within 21 days after the farm inspection, another sample shall be tested for somatic cell count. If the result exceeds the allowable limit for somatic cell count, the producer's permit shall be suspended until corrections are made and the somatic cell count is reduced to 750,000 or less.

F. Drug Residue Level.

1. All licensed dairy plants shall not accept for processing any milk testing positive for drug residue. All milk received at a licensed diary plant shall be sampled and tested, prior to processing, for beta lactam drug residue. When directed by the regulatory agency, additional testing for other drug residues shall be performed. Samples shall be analyzed for beta lactams and other drug residues by methods evaluated by the Association of Official Analytical Chemists (AOAC) and accepted by the Food and Drug Administration (FDA) as effective in determining compliance with "safe levels" or established tolerances. "Safe levels" and tolerances for particular drugs are established by the FDA.

2. Individual producer milk samples for beta lactam drug residue testing shall be obtained from each milk shipment, and shall be representative of all milk received from the producer.

3. A load sample shall be taken from the bulk milk shipment after its arrival at the plant and prior to further commingling. A sample shall be obtained at the plant using a procedure that includes all milk produced and received.

4. Follow-up to positive-testing. When a load sample tests positive for drug residue, industry personnel shall notify the appropriate state regulatory agency immediately, according to state policy, of the positive test result and of the intended disposition of the shipment of milk containing the drug residue. All milk testing positive for drug residue shall be disposed of in a manner that removes it from the human or animal food chain, except when acceptably reconditioned under FDA compliance policy guidelines.

5. Identification of producer. Each individual producer sample represented in the positive-testing load sample shall be singly tested as directed by the state regulatory agency to determine the producer of the milk sample testing positive for drug residue. Identification of the producer responsible for producing the milk testing positive for drug residue, and details of the final disposition of the shipment of milk containing the drug residue, shall be reported immediately to the state regulatory agency.

6. Milk shipment from the producer identified as the source of milk testing positive for drug residue shall cease immediately and may resume only after a sample from a subsequent milking does not test positive for drug residue.

7. Enforcement. A penalty sanctioned by the department shall be imposed on the producer for each occurrence of shipping milk testing positive for drug residue.

8. The producer shall review the "Milk and Dairy Beef Quality Assurance Program" with a licensed veterinarian within 30 days after each occurrence of shipping milk testing positive for drug residue. A signed copy of a certificate confirming that the "Quality Assurance Program" has been reviewed shall be signed by the responsible producer and a licensed veterinarian and forwarded to the department.

9. If a producer ships milk testing positive for drug residue three times within a 12-month period, the department shall initiate administrative procedures to suspend the producer's milk shipping privileges according to state policy.

10. Record of tests. Accurate records listing the results of drug residue tests for each load and individual producer shall be kept on file at the plant. Drug residue test results are to be retained for 12 months. Notifications to the department of positive drug residue tests and intended and final dispositions of milk testing positive for drug residue are to be retained for 12 months.

G. Pesticides.

Composite milk samples shall be sampled and tested for pesticides at a frequency which the department determines is adequate to protect the consumer. The test results from the samples shall not exceed established FDA limits. If a pesticide test is positive, an investigation shall be made to determine the cause and the cause shall be corrected. Milk and milk products containing residues in excess of actionable levels shall not be offered for sale.

R70-320-7. Animal Health.

A. Health of Herd.

1. General Health. All animals in the herd shall be maintained in a healthy condition, and shall be properly fed and kept.

2. Tuberculin Test. The herd shall be located in an area within the State which meets the requirements of a modified accredited area. If the herd is not located in such an area, it shall be tested annually under the jurisdiction of the aforesaid program. All additions to the herd shall be from an area or from herds meeting these same requirements.

3. Brucellosis Test. The herd shall be located in an area within the State which meets the requirements of a modified accredited area. If the area in which the herd is located does not meet these requirements, the herd shall be blood-tested annually or milk ring tested semi-annually. All additions to the herd shall be from an area or from herds meeting the requirements of Plan

A for the eradication of brucellosis in accordance with the above Uniform Methods and Rules.

4. Mastitis and Drug Residues. Milk from cows known to be infected with mastitis or milk containing residues of drugs used in treating mastitis or any other infection shall not be sold or offered for sale for human food.

R70-320-8. Rejected Milk.

A. A plant shall reject specific milk from a producer if it fails to meet the requirements for sight and odor, as required by Subsection R70-320-6(B) or if it is classified No. 4 for sediment content, as required by Subsection R70-320-6(C) or if it fails to meet the provisions of Subsection R70-320-6(E), relating to abnormal milk.

B. Reject milk shall be identified with a reject tag, and harmless food coloring may be added.

C. Field Service. A fieldman shall visit each producer of probational status or reject milk within seven days from the date of the second consecutive substandard test to inspect equipment, utensils and methods of handling the milk and to make suggestions and recommendations for improving milk quality.

R70-320-9. Suspended Milk for Manufacturing.

A. The department may suspend the permit of a producer if one of the following occurs:

1. A new producer's milk does not meet the requirements for acceptable milk, as required by Subsections R70-320-6(C) and R70-320-6(D).

2. The milk has been in a probational (No. 3) sediment content classification for more than ten calendar days, as required by Subsection R70-320-6(C).

3. The milk has been classified "undergrade" for bacterial estimate for more than four successive weeks, as required by Subsection R70-320-6(D).

4. If three out of the last five samples tested for somatic cells exceed the allowable limit, as required by Subsection R70-320-6(E).

5. A growth inhibitor or pesticide residue exceeds actionable level, as required by Subsection R70-320-6(F).

6. If the producer refuses to permit farm inspection.

B. When a plant discontinues receiving milk from a producer for any of the reasons listed in this section, it shall notify the Department immediately and confirm such act in writing.

C. Milk from a producer whose milk has been excluded from the market may be re-accepted by a plant when the cause for exclusions has been corrected and the milk classified as acceptable.

R70-320-10. Testing of Milk.

A. Testing. An examination shall be made on the first shipment of milk from producers shipping milk to a plant for the first time or after a period of non-shipment. The milk shall meet the requirements for acceptable milk. Thereafter milk shall be tested in accordance with the rule.

B. Transfer producers.

1. When a producer discontinues milk delivery to one plant and begins delivery to a different plant, the dairy farm shall be inspected by the Department and shall have a passing score before milk is shipped.

2. Quality control records may be obtained from the previous buyer for the previous six month period. The new buyer shall examine and classify each transfer producer's first shipment of milk and shall subsequently examine shipment in accordance with this rule.

R70-320-11. Record of Tests.

Accurate records listing the results of quality tests of each producer shall be kept on file at the receiving plant for not less than twelve months and shall be available for examination by the Department.

R70-320-12. Farms Producing Milk for Manufacturing.

A. Milking Facility and Housing.

1. A milking barn or milking parlor of adequate size and arrangement shall be provided to permit normal sanitary milking operations. It shall be well lighted and ventilated, and the floors and gutters in the milking area shall be constructed of concrete or other impervious material. The facility shall be kept clean, the manure removed daily and no swine, fowl, or other animals shall be permitted in any part of the milking area. Concentrates and feed, if stored in the building, shall be kept in a tightly covered box or bin.

2. Animal biologics and other drugs intended for treatment of animals, and insecticides approved for use in dairy operations, shall be clearly labeled and used in accordance with label instructions, and shall be stored in a manner which will prevent accidental contact with milk and milk contact surfaces. Only drugs that are approved by the FDA or biologics approved by the USDA for use in dairy animals that are properly labeled according to FDA or USDA regulations shall be administered. When drug storage is located in the milkroom, milkhouse, or milking area, the drugs shall be stored in a closed, tight-fitting storage unit. Drugs shall be segregated in such a way so that drugs labeled for use in lactating dairy animals are separated from drugs labeled for use in non-lactating dairy animals.

3. The yard or loafing area shall be of ample size to prevent overcrowding, shall be drained to prevent forming of water pools, and shall be kept clean.

B. Milking Procedure.

1. The udders and flanks of all milking cows shall be kept clean. The udders and teats shall be washed, sanitized and wiped dry with a clean damp cloth, paper towel or any other sanitary method. The milker's clothing shall be clean and his hands clean and dry. No person with an infected cut or open sore on the person's hands or arms shall milk cows, or handle milk or milk containers, utensils or equipment.

2. Milk stools and surcingles shall be kept clean and properly stored. Dusty operations shall not be conducted immediately before or during milking.

3. Milk must be protected against contamination while straining.

C. Cooling

1. Milk shall be cooled to 45 degrees F or lower within two hours after each milking and maintained at 45 degrees F or lower until transferred to the transport tank.

D. Milkhouse or Milkroom.

1. A milkhouse or milkroom conveniently located and

properly constructed, lighted, and ventilated shall be provided for handling and storing the utensils and equipment. It shall not be used for any other purpose, and shall be equipped with hot water, two compartment wash vat, utensil rack and cooling facilities for the milk. It shall be partitioned, sealed, and screened to prevent the entrance of dust, flies, or other contamination. The floor of the building shall be of concrete or other impervious material and graded to a drain. The walls and ceilings shall be constructed of smooth easily cleaned material. All outside doors shall be self-closing. At least 20 foot candles of light shall be provided in all working areas.

2. The farm tank shall be properly located in the milkroom. There shall not be less than 18 inches clearance with 24 inches recommended on three sides of the tank and a minimum of 36 inches on the outlet side of the tank for access to all areas for cleaning and servicing. It may not be located over a floor drain, under a ventilator or under a light fixture.

3. An adequate platform or slab constructed of concrete or other impervious material shall be provided outside the milk house, properly centered under a suitable port opening in the wall of the milkhouse. The opening shall be fitted with a tight self-closing door. The truck approach to the milkhouse or milkroom shall be properly graded and surfaced to prevent mud or pooling of water at the point of loading.

4. Building plan approval. Plans for new dairy building construction or remodeling shall be submitted to the Department for approval before construction begins.

E. Utensils and Equipment.

1. Utensils, milk coolers, milking machines (including pipeline systems) and other equipment used in the handling of milk shall be maintained in good repair, and shall be washed, rinsed and drained after each milking, stored in suitable facilities, and sanitized immediately before use. Farm bulk tanks shall meet 3-A Sanitary Standards for construction at the time of installation and shall be properly installed.

F. Water Supply.

1. The dairy farm water supply shall be approved, properly protected and of safe, sanitary quality, and have ample water and pressure for the cleaning of dairy utensils and equipment.

2. An automatic hot water storage tank (pressure type) of adequate size shall be provided but shall not be less than 30 gallon capacity and equipped with a thermostat capable of maintaining water temperature at least 140 degrees F. Gas water heaters, if used, shall be properly ventilated.

G. Sewage Disposal. Sewage shall be disposed of in a manner that complies with the State Health and EPA requirements.

H. There shall be available in the milkhouse or room a dairy type thermometer, accurate within two degrees F., integral with the tank construction or operation. The driver shall possess an accurate approved type thermometer. The driver shall check periodically the thermometer by a qualified method to determine its accuracy. Thermometers must be properly sanitized before each use.

I. Qualifications for Farm Certification. Farm certification requires compliance with the items listed on the Farm Certification Report Form as follows:

1. A rating of satisfactory for all items in A--Facilities and

2. A total rating of not less than 85 percent for the applicable items in B--Methods, provided no individual item is rated less than 75 percent of its maximum score.

R70-320-13. Minimum Specifications for Licensed Dairy Plants.

A. Building, Facilities, Equipment and Utensils.

1. Premises. The plant area and surroundings shall be kept clean. A drainage system shall be provided for rapid drainage of all water from plant buildings, including surface water around the plant and on the premises.

a. There shall be provided an area properly designed and constructed for the unloading and washing of bulk milk transport trucks. It will have a concrete floor sloped to a trapped drain.

(1) If the area is completely enclosed (walls and ceiling with the doors closed) during the unloading process and the dust cover or dome and the manhole cover is opened slightly and held in this position by the metal clamps used to close the cover then a filter is not required. However, if the dust covers and/or manhole cover is open in excess of that provided by the metal clamps or the covers have been removed, a suitable filter is required for the manhole.

(2) If the area is not completely enclosed or doors of the unloading area are open during unloading, a suitable filter is required for the manhole and/or air inlet vent and suitable protection must be provided over the filter material either by design of the filter holding apparatus or a roof or ceiling over the area. Direct connections from milk tank truck to milk tank truck must be made from valve to valve and not through the manhole and the dust cover dome of the milk tank truck.

2. Buildings.

a. Construction and Maintenance. Buildings shall be of sound construction, and the exterior and interior shall be kept clean and in good repair to protect against dust, dirt, and mold, and to prevent the entrance or harboring of insects, rodents, vermin, and other animals.

(1) Outside doors, windows, skylights, and transoms shall be screened or otherwise covered. Outside doors shall open outward and be self-closing or be protected against the entrance of rodents and flies. Those leading to processing rooms shall be of metal construction. Window sills on new construction shall be sloping. Outside conveyor openings and other special type outside openings shall be protected by doors, screens, flaps, fans or tunnels. Outside openings for sanitary pipelines shall be covered when not in use; and service-pipe openings shall be completely cemented or have tight metal collars.

(2) All rooms, compartments, coolers, freezers, and dry storage space in which any raw material, packaging or ingredient supplies, or finished products are handled, processed, manufactured, packaged, or stored shall be so designed and constructed as to assure clean and orderly operations. Rooms for receiving milk shall be separated from the processing rooms by a partition or suitable arrangement of equipment or facilities to avoid contamination of milk or dairy products. Boiler and tool rooms shall be separated from other rooms. Toilet and dressing rooms shall be conveniently located and shall not open directly into any room in which milk, dairy products, or ingredients are handled, processed, packaged, or stored. Doors of all toilet rooms shall be self-closing, and fixtures shall be

kept clean and in good repair.

(3) Plans for new plant construction or remodeling of existing plants shall be submitted to the Department for approval prior to such new construction or remodeling.

b. Interior Finishing. In all rooms, in which milk or dairy products are received, handled, processed, manufactured, packaged, or stored, except dry storage of packaged finished products, or in which equipment or utensils are washed; the walls, ceilings, partitions, and posts shall be smoothly finished with a washable material of light color that is impervious to moisture. The floors in these rooms shall be of concrete or other impervious material and shall be smooth, properly graded to drain, and have drains trapped. The plumbing shall be so installed as to prevent back-up sewage into the plant. On new construction or extensive remodeling, the floors shall be joined and coved with the walls to form watertight joints. Sound, smooth, wood floors may be used in certain packaging rooms where the nature of the product permits. Toilet and dressing rooms shall have impervious floors and smooth walls.

c. Ventilation. All rooms and compartments (including storage space and toilet and dressing rooms) shall be ventilated to maintain sanitary conditions, prevent undue condensation of water vapor, and minimize or eliminate objectionable odors.

d. Lighting. Lighting, whether natural or artificial, shall be of good quality and well distributed in all rooms and compartments. All rooms where milk or dairy products are handled, processed, manufactured, or packaged, or where equipment or utensils are washed, shall have at least 30 foot-candles of light intensity on all working surfaces; areas where dairy products are examined for condition and quality, at least 50 foot-candles of light intensity; and all other rooms, at least 5 foot-candles of light intensity measured 30 inches above the floor. Light bulbs and fluorescent tubes shall be protected against shattering and/or falling into the product if broken.

e. Laboratory. Consistent with the size of the plant and the volume and variety of products manufactured, an adequate laboratory shall be provided, maintained, and properly staffed with qualified and trained personnel for quality control and analytical purposes. It shall be located reasonably close to the processing activity in a well lighted and ventilated room of sufficient size to permit proper performance of the tests necessary to evaluate the quality of raw and finished products. A central or commercial laboratory that serves more than one plant and that provides the same services may be utilized.

3. Facilities.

a. Water Supply. Both hot and cold water of safe and sanitary quality shall be available in sufficient quantity for all plant operations and facilities. Water from other lines, when officially approved, may be used for boiler feed water and condenser water, if such water lines carrying the sanitary water supply, and the equipment is so constructed and controlled as to preclude contamination of any milk product or milk product contact surface. There shall be no cross connections between safe and unsafe water lines. Culinary water in the plant is to be from an approved source.

(1) Bacteriological examination shall be made of the plant sanitary water supply at least once every six months by the appropriate regulatory agency to determine purity and safety for use in processing or manufacturing dairy products.

b. Employee Facilities. In addition to toilet and dressing rooms, the plant shall provide the following employee facilities: conveniently located sanitary drinking water; a locker or other suitable facility for each employee; handwashing facilities, including hot and cold running water, soap or other detergents and sanitary towels or air driers, in or adjacent to toilet and dressing rooms and at other places where necessary for the cleanliness of all personnel handling products and self-closing containers for used towels and other wastes.

(1) A durable, legible sign shall be posted conspicuously in each toilet and dressing room directing employees to wash their hands before returning to work.

c. Steam. Steam shall be supplied in sufficient volume and pressure for satisfactory operation of each applicable piece of equipment. Steam that may come into direct contact with milk or dairy products shall be conducted through a steam strainer and purifier equipped with a steam trap and shall be free from any compounds that may contribute flavors or endanger health. Only non-toxic boiler compounds shall be used.

d. Disposal of Wastes. The plant sewage system shall have sufficient slope and capacity to remove readily all waste from processing operations. Where a public sewer is not available, wastes shall be disposed of by methods approved by the appropriate government agency. Containers for the collection and holding of wastes shall be constructed of metal or other equally impervious material, kept covered with tight-fitting lids, and placed outside the plant on a concrete slab or on a rack at least 12 inches above the ground. Solid wastes shall be disposed of regularly and the containers cleaned before reuse, and dry waste paper shall be properly disposed of.

4. Equipment and Utensils.

a. Construction and Installation.

New equipment shall meet 3-A Sanitary Standards designed for the intended use. Equipment and utensils coming in contact with milk or dairy products, including sanitary pumps, piping, fittings, and connections, shall be constructed of stainless steel or equally corrosion resistant material; except that, where the use of stainless steel is not practicable. Copper kettles for swiss cheese and copper evaporators and brass fillers for evaporated milk may be approved if free from corroded surfaces and kept in good condition. Wooden churns in use may be approved temporarily if maintained in good condition. Nonmetallic parts having product contact surfaces shall be of material that is resistant to abrasion, scratching, scoring and distortion, is non-toxic, fat-resistant, and relatively inert or non-absorbent or insoluble, and that will not adversely affect the flavor of the products.

(1) All equipment and piping shall be so designed and installed as to be easily accessible for cleaning and shall be kept in good repair and free from cracks and corroded surfaces. Milk pumps shall be of a sanitary type and easily dismantled for cleaning. New or rearranged equipment shall be set out at least 24 inches from any wall or spaced at least 24 inches between pieces of equipment that measure more than 48 inches on the parallel sides. (This shall not apply between storage tanks when the face of the tanks extends through the wall into the processing room.) All parts or interior surfaces of equipment, pipes (except certain piping cleaned in place), or fittings, including valves and connections, shall be accessible for

inspection. Cleaned-in-place sanitary piping shall be properly installed and self-draining. Welded sanitary pipeline systems when used with C-I-P cleaning will be acceptable if properly engineered and installed.

b. Pasteurization Equipment.

Where pasteurization is intended or required, an automatic flow-diversion valve and holding tube, or its equivalent if not part of the existing equipment, shall be installed on all high-temperature short-time pasteurizing equipment to assure complete pasteurization. Equipment and operation shall be in accordance with 3-A Accepted Practices for the Sanitary Construction, Installation, Testing and Operation of High Temperature Short-Time Pasteurizers.

(1) Long stem indicating thermometers that are accurate within plus or minus 0.5 degrees F, for the applicable temperature range, shall be provided for determining temperatures of pasteurization of products in vats and for verifying the accuracy of recording thermometers. Short-stem indicating thermometers that are accurate within plus or minus 0.5 degrees for the applicable temperature range shall be installed in the proper stationary position in all high-temperature short-time and dome-type pasteurizers and all storage tanks where temperature readings are required.

(2) Recording thermometers that are accurate within 1 degree F plus or minus, between 142 degrees and 145 degrees F or in the case of 15-second pasteurization between 160 degrees and 163 degrees F shall be used on each pasteurizer to record pasteurization temperature.

c. Cleaning and Sanitizing. Equipment, sanitary piping, and utensils used in receiving, storing, processing, manufacturing, packaging, and handling of milk or dairy products, and all product contact surfaces of homogenizers, high-pressure pumps, and high-pressure lines shall be kept clean and sanitary. Stacks, elevators, conveyors, and the packing glands on all agitators, pumps, and vats shall be inspected at regular intervals and kept clean. Equipment coming in contact with milk or dairy products shall have effective bactericidal or sanitizing treatment immediately before use.

(1) Equipment not designed for C-I-P cleaning shall be disassembled daily and thoroughly cleaned and sanitized. Dairy cleansers, wetting agents, detergents, sanitizing agents, or other similar material may be used that will not contaminate or adversely affect dairy products. Steel wool or metal sponges shall not be used in the cleaning of any dairy equipment or utensils.

(2) C-I-P cleaning shall be used only on equipment and pipeline systems that are designed and engineered for that purpose. Installation and cleaning procedures shall be in accordance with 3-A Method for the Installation and Cleaning of Cleaned-in-Place Sanitary Milk Pipelines for Milk and Milk Products Plants.

(3) Areas and equipment which can't be cleaned with water in the plant shall be thoroughly vacuumed regularly with a heavy-duty industrial vacuum cleaner and the material picked up shall be disposed of to destroy any insects present.

B. Plant Operations.

1. Milk and Milk Products.

All milk and milk products, including concentrated milk and milk products, shall be packaged at the plant where final pasteurization is performed. Such packaging shall be done without undue delay following final pasteurization.

a. Pasteurization.

When pasteurization is intended or required, or when a product is designated "pasteurized", pasteurization shall be accomplished by heating every particle of milk or skim milk to a temperature of not less than 145 degrees F and cream and other milk products to at least 150 degrees F and ice cream mix to at least 155 degrees F and holding them at those temperatures continuously for not less than 30 minutes, or milk or skim milk to a temperature of 161 degrees F and cream and other milk products to at least 166 degrees F for not less than 15 seconds, and ice cream mix to at least 175 degrees F for not less than 25 seconds, or by any other combination of temperature and time giving equivalent results. The phenol value of the pasteurized product shall be no greater than the maximum specified for the particular product, as determined by the phosphatize test, Method II, of the latest edition of "Official Methods of Analysis of the Association of Official Analytical Chemists".

b. Cream for Buttermaking. Cream for buttermaking shall be pasteurized at a temperature of not less than 165 degrees F and held continuously in a vat at such temperature for not less than 30 minutes, or at a temperature of not less than 185 degrees F for not less than 15 seconds, or any other temperature and holding time approved by the Department that will assure pasteurization and comparable keeping quality characteristics. If the vat method of pasteurization is used, vat covers shall be kept closed during the holding and cooling periods.

2. Cooling.

Processed fluid milk products shall be cooled promptly after heat treatment to such a temperature as will adequately inhibit development or other deterioration of quality.

3. Storage.

a. Utensils and portable equipment.

Utensils and portable equipment used in processing operations shall be stored above the floor, in clean, dry locations, and in self-draining positions on racks constructed of impervious, corrosion resistant material.

b. Raw product storage.

All milk shall be held and processed under conditions and at temperatures that will avoid contamination and rapid deterioration. Drip milk from can washers or any other source shall not be used for the manufacture of dairy products. Bulk milk in storage tanks within the dairy plant shall be handled in such a manner as to minimize bacterial increase and shall be maintained at 45 degrees F. or lower until processing begins. This does not preclude holding milk at higher temperatures for a period of time, where applicable to particular manufacturing or processing practices.

The bacteriological estimate of commingled milk in storage tanks shall be 1 million per m. or lower.

c. Non Refrigerated Products.

Dairy products in dry storage shall be arranged in aisles, rows, sections, or lots or in such a manner as to be orderly and easily accessible for inspection and as to permit adequate cleaning of the room. Dunnage or pallets shall be used when applicable. Dairy products shall not be stored with any product that would damage them or impair their quality. Open containers shall be carefully protected from contamination.

d. Refrigerated Products. All products requiring refrigeration shall be stored under such optimum temperatures and humidity as will maintain their quality and condition. Products shall not be placed directly on the floors or be exposed to foreign odors or conditions such as dripping or condensation that might cause package or product damage.

e. Supplies.

Items in supply rooms shall be kept clean and protected and be so arranged as to permit inspection of supplies and cleaning and spraying of the room. Insecticides and rodenticides shall be properly labeled, segregated, and stored in a separate room or cabinet away from milk or dairy products or packaging supplies.

4. Laboratory Control Tests.

Quality control tests shall be made on flow samples as often as necessary to check the effectiveness of processing in order to correct processing deficiencies. Routine analyses shall be made on raw materials and finished products to assure adequate composition control. When applicable, keeping quality tests shall be made to determine product stability.

5. Packaging and General Identification.

a. Packaging. Dairy products shall be packaged in commercially acceptable containers or packaging material that will protect the quality of the contents in regular channels of trade. Prior to use packaging materials shall be protected against dust, mold and other possible contamination.

b. Butter liners shall be of approved plastic or waxed covered parchment or other material that may be approved by the Department.

c. General Identification.

Commercial bulk shipping containers for dairy products shall be legibly marked with the name of the product, net weight or content, name and address of processor, manufacturer or distributor, and plant license number. Consumer-packaged products shall be legibly marked with the name of product, net weight, or content, and name and address of packer or distributor.

C. Plant Licensing.

1. Qualifications.

Plant licensing requires compliance to specifications in Section 8a through 8c. In addition, licensing requires that

a. not more than 10 percent of the cans (including lids) shall show open seams, cracks, rust, milkstone, or any unsanitary condition;

b. where pasteurization is intended or required, and a high-temperature short-time unit is used, it shall be equipped with a flow-diversion valve and holding tube or its equivalent; and

c. a safe water line shall be provided with no cross-connections between safe and unsafe lines.

R70-320-14. Licensing Plant, Milk Graders, and Bulk Milk Collectors.

A. Necessity for Plant License.

Every plant receiving or processing milk for the manufacture of dairy products shall be inspected and licensed as provided in Section R70-320-13. A new plant shall be inspected and licensed as provided in Section R70-320-13 before buying or processing any milk for the manufacture of dairy products. No unlicensed plant shall handle, purchase or receive milk or manufacture dairy products therefrom.

1. All licensed plants shall be evaluated at least semi-annually after issuance of the initial license to determine eligibility for license renewal. The inspection procedure for license renewal shall be the same as that for initial licensing.

B. Application for License.

Applications to the Department for a new or renewal license for dairy plants, milk graders, and bulk milk haulers shall contain the name and address of the applicant and such other pertinent information as may be required.

C. Plant Inspection.

Each plant shall be inspected by a compliance officer. If, upon initial inspection, the compliance officer finds that the plant meets the requirements for licensing described in Subsections R70-320-8(A) and R70-320-8(C) and Sections R70-320-15 and R70-320-16, as indicated by the Plant Inspection Report Form, a license shall be issued to the plant as described in Section R70-320-13. If the plant does not meet the requirements for licensing, the plant shall be re-inspected by a compliance officer within 30 days of the initial inspection. A longer time may be allowed if major changes or new equipment is required. If at this time the plant meets the requirements for licensing, a license shall be issued. If the plant does not meet the requirements for licensing, it shall not be licensed, and its authorization to handle, purchase, or receive milk or to manufacture dairy products therefrom shall be withheld until such time as the plant qualifies for a license. The plant will be charged for mileage expended by the Department for any subsequent visits required for certification of the plant. Each completed Plant Inspection Report Form shall be left at the plant and a copy shall be kept by the Department.

D. Issuance of License.

1. Dairy Plants.

The Department shall license dairy plants that meet the specifications of Sections R70-320-13, R70-320-15 and R70-320-16 based upon the inspection procedure described in Section R70-320-13. The license certification shall be posted conspicuously at the plant. The license shall authorize the plant to test, purchase, and receive milk for manufacturing purposes and to manufacture dairy products therefrom, in compliance with the applicable provisions of the Utah Dairy Act and the rules and regulations issued pursuant thereto.

2. Milk Graders and Bulk Milk Haulers.

The Department shall license milk graders and bulk milk haulers who meet the requirements prescribed by the Department. The licenses of milk graders and bulk milk haulers shall authorize them to grade, accept, and reject raw milk in accordance with the provisions of Section R70-320-6.

E. Expiration, Suspension, and Revocation of License.

Licenses shall expire and become renewable each year the 31st of December, unless revoked earlier, and no license shall be transferable. If at any time an inspector determines that a licensed plant does not meet the requirements for licensing, he may allow a reasonable probationary period for the operator to bring his plant within the requirements for licensing.

If at the end of this time the plant does not meet the licensing requirements, the Department may revoke the plant license. The Department may suspend or revoke licenses of bulk milk haulers for any violation of these rules or Title 4, Chapter 3. An opportunity for a hearing shall be provided any

licensee before suspension or revocation of this license.

F. Reinstatement.

If, after a period of withholding, probation, or revocation of a plant license, the operator makes the necessary corrections at the plant, he may apply to the Department for re-inspection and reinstatement. When the compliance officer determines that requirements for licensing have been met, the Department shall issue a license to the plant. The reinstatement of licenses for milk graders and bulk milk haulers which have been suspended or revoked shall be made only after satisfying the Department of their qualifications.

R70-320-15. Records Required to be Kept by Plants.

A. Availability.

All records required to be kept by plants shall be available for examination by the Department at all reasonable times.

B. Farm Certification Report Forms.

A copy of completed Farm Certification Report Forms shall be kept on file at the plant for at least 24 months.

C. Milk Quality Test Records.

Accurate records listing the results of quality tests on each producer's milk shall be kept on file at the plant for at least 12 months.

D. Water Supply Test Records.

The results of all plant water supply tests shall be kept on file at the plant for at least 12 months.

E. Laboratory Control Test Records.

Records of all laboratory control tests shall be kept on file at the plant for at least 12 months.

F. Pasteurization Recorder Charts.

Recorder charts showing the pasteurization record for each day shall be appropriately marked with the name of the product, date, and signature of the operator. The charts shall be kept on file at the plant for at least three months.

R70-320-16. Personnel Cleanliness and Health.

A. Cleanliness.

Plant employees shall wash their hands before beginning work and upon returning to work after using toilet facilities, eating, smoking, or otherwise soiling their hands. They shall keep their hands clean and follow good hygienic practices while on duty. Expectorating or use of tobacco in any form shall be prohibited in rooms and compartments where milk or dairy products are unpacked or exposed. Clean white or light colored washable outer garments and caps (paper caps or hairnets are acceptable) shall be worn by all persons engaged in handling milk or dairy products.

B. Health.

(1) No person afflicted with a communicable disease shall be permitted in any room or compartment where milk or dairy products are prepared, processed, or otherwise handled. No person who has a discharging or infected wound or sore, or lesion on hands, arm or other exposed portions of the body shall work in any plant processing or packaging rooms or in any capacity resulting in contact with milk or dairy products including dairy farms and bulk milk haulers.

(2) An employee returning to work following illness from a communicable disease shall have a certificate from his attending physician to establish proof of complete recovery.

R70-320-17. Transportation of Raw Milk.

A. Transportation of Milk.

Vehicles used for the transportation of milk shall be of the enclosed type, constructed and operated to protect the product from extreme temperatures, dust, or other adverse conditions, and they shall be kept clean.

B. Transport Trucks.

1. Construction.

Transport tanks shall be stainless steel lined and so constructed that the lining will not buckle, sag, or prevent complete drainage. All milk contact surfaces shall be smooth, easily cleaned, and maintained in good repair. The pump and hose cabinet shall be fully enclosed with tight-fitting doors. New and replacement transport tanks shall meet the applicable 3-A Sanitary Standards for Milk Transport Tanks.

2. Transfer of Milk to Transport Tank.

Milk shall be transferred from farm bulk tanks to transport tanks through stainless steel piping or approved tubing under sanitary conditions. This sanitary piping and tubing shall be clean and capped when not in use.

3. Cleaning and Sanitizing.

A covered or enclosed washing dock and other facilities shall be available for all plants that receive or ship milk in tanks. Milk transport tanks, sanitary piping, fittings, and pumps shall be cleaned and sanitized at least once each day, after use; provided that, if they are not to be used immediately after emptying a load of milk, they shall be washed promptly after use and given bactericidal treatment immediately before use. Whenever a milk tank truck has been cleaned and sanitized as required by the regulatory agency, it shall bear a tag, or a record shall be made showing the date, time, place and signature of the employee or contract hauler doing the work unless the truck delivers to only one receiving unit where responsibility for cleaning and sanitizing can be definitely established without tagging. The tag shall not be removed until the tank is again washed and sanitized.

4. Transportation Trucks, Tanks, and Accessories.

The transportation truck, tank and accessories shall be used for no other purpose than the handling of milk unless such use is approved by the Department.

R70-320-18. Transport Tanks, Operators.

A. All milk haulers must possess a permit issued by the Department. A candidate or substitute milk hauler is required to obtain a permit within ten days from the date they commence hauling operations. The ten day period is for training and observation to provide the Department and company officials with an opportunity to check the hauler's pickup technique and observe the degree to which he is following required pickup practices. Training may take the form of instruction in pickup technique or may include a required period of observation apprenticeship in which the candidate accompanies a permittee in the performance of his duties.

1. An examination may be administered at the conclusion of the ten day period and candidates failing the test will be denied permits until indicated deficiencies are corrected.

2. Drivers shall be qualified to efficiently carry out the procedures necessary for the sanitary transfer of milk from the farm tank to the dairy plant. All milk haulers shall be subject to

such examination as the Department may prescribe by rule in order to receive and retain such permit. The fee for the permit shall be $25.00 and renewed annually.

B. The milk line shall be passed through a special port opening through the milkhouse wall with care to prevent contact with the ground. The port opening shall be closed when not in use.

C. It shall be the responsibility of the milk hauler to assure himself that, in the event the processor washes and sanitizes the truck, the operation has been adequately performed, and that prior to use, the truck tank has been properly sanitized with an approved sanitizer. In the event it is his responsibility to sanitize the truck tank, he shall do so with a solution of proper strength.

D. The milk hauler shall wash his hands immediately before taking a measurement and/or sample of the milk.

E. The milk shall be observed and checked for abnormalities or adulterations, and all abnormal or adulterated milk shall be rejected.

F. Drivers shall maintain a clean, neat, personal appearance and take measurements and collect milk samples for analysis in a sanitary manner using properly identified clean containers. All sampling procedures shall follow standard methods.

G. The following are the procedures for picking up bulk milk.

1. Take and record the tank reading. (If the tank is agitating when the hauler arrives, let it continue for five minutes before taking the butterfat sample. Then turn off the agitator and wait until the milk is quiescent before taking measurement.) Note: Cleanliness and dryness are essential to accurate readings. The rod must be warm enough so that moisture from the atmosphere will not condense on the rod after it has been dried or dusted, prior to inserting it into a tank to make a reading of the liquid level.

2. Turn on the agitator and agitate at least five minutes before taking a sample.

3. While tank is agitating, record temperature and time and hook up the hose and electricity to the truck.

4. While agitator is running, take sample from three positions in tank center and both ends. Collect quality samples in same manner.

5. Shut off agitator and pump out tank.

6. Rinse tank and accessories free of milk with clean water immediately after emptying and disconnecting tubing.

H. After the milk is pumped to the transportation tank the milk conductor tubing shall be capped and returned to the vehicle storage cabinet. Care shall be taken to prevent contamination of the milk tubing.

R70-320-19. Supervision.

A. Regulatory Agency. The Department to insure compliance with the provisions of these rules shall:

1. Make periodic examinations of milk from a representative number of producers at each plant to determine whether the milk is being graded and tested in accordance with the applicable provisions of Section R70-320-6.

2. Examine the quality records of transfer producers at each plant periodically and when necessary determine the acceptability of such producer's milk.

3. Make periodic farm inspections and compare the results of such inspections with the completed Farm Certification Report Forms on file at the plant to determine whether the fieldmen are making proper inspections and reports.

4. Periodically examine the completed Farm Certification Report Forms and milk quality test records on individual producers at each plant.

5. Periodically inspect plant premises, buildings, equipment, facilities, operations, and sanitary practices.

6. Assist plant management, laboratory and field staffs with educational programs among producers relating to quality improvements of milk.

7. Perform such other services and institute such other supervisory procedures as may be necessary to ensure compliance with the provisions of these rules.

KEY: food inspection
1994 **4-2-2(1)(j)**
Notice of Continuation February 13, 2002 **4-3-2**

R70. Agriculture and Food, Regulatory Services.
R70-350. Ice Cream and Frozen Dairy Foods Standards.
R70-350-1. Authority.

A. Promulgated Under the Authority of Section 4-3-2.

B. Scope: This rule shall apply to all frozen dairy foods and frozen dairy food mixes sold, bought, processed, manufactured, or distributed within the state of Utah.

R70-350-2. Standards of Identity.

A. Federal Standards Acceptance.

The standard for federally defined products of ice cream, ice milk, sherbet, water ice, and related products shall be the same in Utah as the most recently accepted federal standards of identity for these frozen desserts unless specifically excluded or modified by some provision of state rule or interpretation thereof.

B. Frozen Dairy Foods Mix.

Frozen Dairy Foods Mix shall be defined as the unfrozen combination of ingredients to be used in any frozen dairy product defined in this rule with or without fruits, fruit juices, candy, nut meats, flavoring or harmless color.

C. Shake Mix

Shake Mix shall be defined as a product resulting from agitation of frozen dairy food to which Grade A pasteurized milk has been added. The resulting product must have at least two percent but not more than seven percent milkfat and at least 11 percent milk solids; or it may be a product prepared from the same ingredients in the same manner as prescribed in the definition for ice milk except that it shall be sold or served in a semi-frozen state.

D. Frozen Yogurt, Frozen Lowfat Yogurt and Frozen Nonfat Yogurt.

Frozen yogurt, frozen lowfat yogurt, and nonfat frozen yogurt is the food made from dairy ingredients with or without added flavoring or seasoning, which has been pasteurized and fermented by one or more strains of Lactobacillus bulgaricus, including yogurt strains, Streptococcus thermophilus and Lactobacillus acidophilus. The parenthetical phrase "(heat-treated after culturing)" shall follow the name of the food if the dairy ingredients have been pasteurized after culturing. Fruits may be added before or after the mix is pasteurized and cultured. Such product may contain harmless edible stabilizers or emulsifiers not to exceed 0.6 percent. It shall have a titratable acidity of not less than 0.5 percent expressed as lactic acid; it shall contain no more than 10 coliform bacteria per gram; it shall contain not more than 10 colonies per gram each of molds, yeasts, and other fungi. The freezing and air incorporation shall not exceed 60 percent by volume of the product. Frozen yogurt shall contain not less than 3.25 percent milkfat. Frozen lowfat yogurt shall contain not less than 2 percent milkfat. Frozen nonfat yogurt shall contain less than 0.5 percent milkfat. Frozen fruit yogurt shall contain not less than 8 percent by weight of clean, mature, sound fruit or its equivalent in other forms. The milkfat content of frozen fruit yogurt may be reduced to not less than 2.8 percent milkfat and the milkfat content of lowfat frozen fruit yogurt may be reduced to not more than 1.3 percent milkfat. Frozen yogurt, frozen lowfat yogurt and nonfat frozen yogurt shall contain not less than 8.25 percent milk solids not fat.

E. Frozen yogurt mix, Frozen Lowfat yogurt mix, and Frozen nonfat yogurt mix are unfrozen products which are used in the manufacture of frozen yogurt, Frozen Lowfat yogurt, and Frozen Nonfat yogurt. They shall comply with all the requirements for frozen yogurt, Frozen Lowfat yogurt, and frozen nonfat yogurt.

R70-350-3. Bacterial Quality.

A. Sampling.

Samples of ice cream and frozen dairy foods shall be tested by each processor at least once a month and from each distributor as often as may be required by the regulatory authorities. The products defined in this rule shall contain not more than 50,000 bacteria per milliliter by standard plate count, except cultured products with viable organisms shall be exempt from this bacterial count requirement. All products shall have a coliform count not exceeding 10 per gram.

B. Enforcement.

1. Whenever more than one of the last four consecutive coliform counts of samples taken on separate days by the processor or the Department is in excess of 10 per gram or more than one of the last four bacteria counts of samples taken on separate days by the processor or the Department is above 50,000 per milliliter, a written warning notice thereof shall be sent to the person concerned by the Department. An authorized regulatory agency shall then take an additional sample, but not before the lapse of three days after notification. Violation of the standards as shown by the results of these additional samples shall call for immediate enforcement action to require the discontinuance of the sale or distribution of the product from the establishment until additional samples taken by the authorized regulatory agency shall show the product to be in compliance with the applicable standards.

2. Frozen dairy foods shall, after pasteurization and before the addition of bulky flavorings such as fruits, nuts, and candy, meet the bacterial standards requirements listed in this section. Finished product without bulky flavorings shall also meet the requirements in this section. Bulky flavorings shall meet all food standards for composition, sanitation and adulteration in effect in Utah for foods.

R70-350-4. Pasteurization and Sanitation.

A. Pasteurization.

1. All products defined in this rule shall be pasteurized by heating every particle of the product to at least 155 degrees F and holding at that temperature or above for at least 30 minutes under the required safeguards in approved equipment as outlined in the 3-A standards; provided that any other method which is demonstrated to be equally efficient and is approved by the Department may be allowed.

2. Time and temperature record charts for pasteurization shall be dated and preserved for a period of at least six months at the plant of manufacture.

B. Reconstitution.

Whenever water must be used to reconstitute any defined product, the product shall be pasteurized after being reconstituted or it shall be reconstituted by pouring the concentrate or dry mix from the factory-packed container into a properly constructed, clean, and sanitized container.

C. Cooling.

All liquid ingredients which will support bacterial growth shall be kept or immediately cooled to 40 degrees F. or below.

D. Sanitation. All manufacturing, processing, storage, distribution or handling of any product regulated under this act shall be done in buildings or other approved facilities using utensils, equipment, and methods which are approved by the Department or other properly authorized regulatory agency.

R70-350-5. Adulteration and Misbranding.

A. Labeling. Labeling of packages shall include the name and address of the manufacturer, packer, or distributor; net contents, ingredients and common or usual name of the product. Also, labeling shall meet all other applicable requirements of state labeling rules and federal regulations adopted by reference under the Utah Foods Act, including nutritional labeling where applicable.

B. Imitations.

1. Any food product offered for sale in semblance or imitation of any food regulated under this rule shall be deemed to be adulterated and misbranded if such food does not conform to the standards under this rule, notwithstanding the employment of any fanciful name or use of the word "imitation" to designate the product.

2. No person shall use "ice cream", "cream", "creme", "creamy", or "cremey", or any other word or phrase which may be construed to be misleading in either labeling or advertising, sale, or distribution of ice milk.

C. Adulteration.

Products defined in this rule shall be deemed to be adulterated if they were not produced under the sanitary requirements of this rule or if they contain any substance in sufficient quantity to be deleterious to the public health or if they meet the criteria of adulteration under Utah's dairy and food laws.

KEY: food inspection
1992 4-3-2
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R70. Agriculture and Food, Regulatory Services.
R70-360. Procedure for Obtaining a License to Test Milk for Payment.
R70-360-1. Authority.

A. Promulgated Under the Authority of Section 4-3-2.

B. Scope: This rule outlines the requirements that are necessary in order to obtain a license to test milk for payment.

R70-360-2. License Requirements.

A. This license is issued to an individual and is not transferable.

B. Licenses shall expire on December 31 of each year.

C. In order to obtain a license to test milk for payment, an individual must demonstrate testing proficiency by successfully completing a series of split samples provided by the department. After an individual meets the criteria for certification, an application will be filled out and submitted along with payment of a license fee, determined by the department pursuant to Subsection 4-2-2(2), to the department for issuance of a license.

R70-360-3. Renewal Procedure.

Split samples may be made available to licensed testers periodically to check for competency in testing. The Department will provide the results to the tester. The split sample results will be evaluated. If a tester does not achieve accurate results, the Department will work with that tester to correct the problem.

R70-360-4. License Suspension or Revocation.

If any provision of this rule or the Utah Dairy Act is violated, the tester's license may be subject to suspension or revocation after due process of a hearing.

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R70. Agriculture and Food, Regulatory Services.
R70-910. Voluntary Registration of Servicemen and Service Agencies for Commercial Weighing and Measuring Devices.
R70-910-1. Authority.

Promulgated under Section 4-9-2.

R70-910-2. Policy.

It shall be the policy of the Division of Regulatory Services, Weights and Measures Program, of the Utah Department of Agriculture and Food to accept voluntary registration of:

A. an individual and/or

B. an agency that provides acceptable evidence that he or it is fully qualified to install, service, repair, or recondition a commercial weighing or measuring device; has a thorough working knowledge of all appropriate weights and measures laws, orders, rules, and regulations; and has possession of, or has accessible for his use, weights and measures standards and testing equipment certified by the Department of Agriculture and Food to be appropriate in design and capacity. This policy shall in no way preclude or limit the right and privilege of any qualified individual or agency not registered with the Department of Agriculture and Food to install, service, repair, or recondition a commercial weighing or measuring device.

R70-910-3. Definitions.

A. "Registered Servicemen" - shall be construed to mean any individual who for hire, award, commission, or any other payment of any kind, installs, services, repairs or reconditions a commercial weighing or measuring device, and who voluntarily registers himself as such with the Department of Agriculture and Food.

B. "Registered Service Agency" - shall be construed to mean any agency, firm, company, or corporation which, for hire, award, commission, or any other payment of any kind, installs, services, repairs, or reconditions a commercial weighing or measuring device, and which voluntarily registers itself as such with the Department of Agriculture and Food. Under agency registration, identification of individual servicemen shall be required.

C. "Commercial Weighing and Measuring Device" - shall include any weight or measure or weighing or measuring device commercially used or employed in establishing the size, quantity, extent, area, or measurement of quantities, things, product, or articles for distribution or consumption, purchased, offered or submitted for sale, hire, or award or in computing any basic charge or payment for services rendered on the basis of weight or measure, and shall also include any accessory attached to or used in connection with a commercial weighing or measuring device when such accessory is so designed or installed that its operation affects, or may affect, the accuracy of the device.

R70-910-4. Reciprocity.

The Department of Agriculture and Food may enter into a reciprocal agreement with any other State or States that have similar voluntary registration policies. Under such agreement, the Registered Servicemen and the Registered Service Agencies of the States party to the reciprocal agreement are granted full reciprocal authority, including reciprocal recognition of certification of standards and testing equipment, in all states party to such agreement.

R70-910-5. Registration Fee.

Upon application for and renewal of registration, the applicant shall pay to the Department of Agriculture and Food a registration fee determined by the department pursuant to subsection 4-2-2(2) for Registered Serviceman and/or Registered Service Agency. Registration shall expire December 31 of each year, and shall be renewed annually.

R70-910-6. Voluntary Registration.

An individual or agency may apply for voluntary registration to service weighing devices or measuring devices on an application form supplied by the Department of Agriculture and Food. Said form, duly signed and witnessed, shall include certification by the applicant that the individual or agency is fully qualified to install, service, repair, or recondition such devices as specified upon registration; has in possession, or available for his use, all necessary testing equipment and standards; and has full knowledge of all appropriate weights and measures laws, orders, rules, and regulation. An applicant also shall submit appropriate evidence or references as to qualifications.

R70-910-7. Certificate of Registration.

Upon receipt and acceptance of a properly executed application form, the Department of Agriculture and Food shall issue to the applicant a "Certificate of Registration," including an assigned registration number, which shall remain effective until returned by the applicant, withdrawn by the Department of Agriculture and Food, or registration expires.

R70-910-8. Privileges of a Voluntary Registrant.

The bearer of a Certificate of Registration shall have the authority to remove an official rejection tag or mark placed on a weighing or measuring device by the authority of the Department of Agriculture and Food; place in service, until such time as an official examination can be made, a weighing or measuring device that has been officially rejected; and place in service, until such time as an official examination can be made, a new or used weighing or measuring device.

R70-910-9. Place in Service Report.

The Department of Agriculture and Food shall furnish each Registered Serviceman and Registered Service Agency with a supply of report forms to be known as "Placed in Service Reports". Such a form shall be executed in triplicate, shall include the assigned registration number, and shall be signed by a Registered Serviceman or by a serviceman representing a Registered Agency for each rejected device restored to service and for each newly installed device placed in service. Within 24 hours after a device is restored to service, or placed in service, the original of the properly executed Place in Service Report, together with any official rejection tag removed from the device, shall be mailed to the Department of Agriculture and Food, the Division of Regulatory Services, Weights and Measures Program, 350 North Redwood Rd, PO Box 146500, Salt Lake

City, UT 84114-6500. The duplicate copy of the report shall be retained by the owner or operator of the device, and the triplicate copy of the report shall be retained by the Registered Serviceman or Agency.

R70-910-10. Standards and Testing Equipment.

A Registered Serviceman and a Registered Service Agency shall submit, at least biennially to the Department of Agriculture and Food, for examination and certification, any testing equipment and standards that are used, or are to be used, in the performance of the service and testing functions with respect to weighing and measuring devices for which competence is registered. A Registered Serviceman or Agency shall not use in officially servicing commercial weighing or measuring devices any standards or testing equipment that have not been certified by the Department of Agriculture and Food.

R70-910-11. Qualification to Service Heavy Capacity Scales.

No registered service agency or serviceman shall be qualified to place in service or remove a Rejection Tag from a heavy capacity scale unless such registered service agency or serviceman has adequate testing weights certified by the Utah Department of Agriculture and Food, Division of Regulatory Services, Weights and Measures Program. Adequate testing weights shall be deemed to be 10,000 pounds of test weights or one-fourth the capacity of the scale, whichever is less.

R70-910-12. Revocation of Certificate of Registration.

The Department of Agriculture and Food may, for good cause, after careful investigation, consideration, and due notice and process which shall include an opportunity for a hearing, suspend or revoke a Certificate of Registration, Section 4-1-5 and Section 63-46b.

R70-910-13. Publication of Lists of Registered Servicemen and Registered Service Agencies.

The Department of Agriculture and Food shall publish, and may supply upon request, lists of Registered Servicemen and Registered Service Agencies.

KEY: inspections
February 12, 2002 **4-9-2**
Notice of Continuation May 3, 2001

R70. Agriculture and Food, Regulatory Services.
R70-940. Standards and Testing of Motor Fuel.
R70-940-1. Authority and Scope.

A. Promulgated under Authority of Section 4-33-4 and Subsection 4-2-2(1)(j).

B. Scope: This rule establishes the requirements for the blending and sale of motor fuel in the state of Utah.

R70-940-2. Standards.

Motor fuels are to meet the following standards:

A. "Octane." (R+M)/2. ASTM D-4814 (ASTM - American Standard of Testing Materials).

B. "Vapor Pressure." ASTM D-323 on Reid Vapor Pressure and ASTM's Information Document on Oxygenated Fuels, Section 4.2.1.

C. "Distillation." ASTM D-86 and ASTM revised D-4814 relative to alcohol blends (along with ASTM's Information Document on Oxygenated Fuels).

D. "Water Tolerance." ASTM D-4814.

E. "Phase Separation." Must be homogenous, no phase separation.

F. "Corrosivity." ASTM D-4814.

G. "Benzene." ASTM D-3606.

H. "Flash Point." ASTM D-93 or D-56.

I. "Gravity." ASTM D-1298.

J. "Sulfur." (X-ray method) ASTM D-2622, 1266, 1552, 2622 or 4294.

K. "Aromatics." ASTM D-1319.

L. "Leads." ASTM D-3237.

M. "Cloud point." ASTM D-2500.

N. "Conductivity." ASTM D-2624.

O. "Cetane" ASTM D-976 or 4737.

P. "Cosolvents." Methanol or ethanol based fuels shall include such cosolvents as are required to increase the water tolerance of the finished gasoline blend to the level specified in R70-940-2-D above.

Q. "Method of Operation." Equipment shall be operated only in the manner that is obviously indicated by its construction or that is indicated by instructions on the equipment.

R. "Maintenance of Equipment." All equipment in service and all mechanisms and devices attached thereto or used in connection therewith shall continuously be maintained in proper operating condition throughout the period of such service.

S. "Product Storage Identification." The fill connection for any petroleum product storage tank or vessel supplying retail motor fuel devices shall be permanently, plainly, and visibly marked as to product contained. When the fill connection device is marked by means of color code, the color key shall be conspicuously displayed at the place of business.

R70-940-3. Labels.

All motor fuel kept, offered or exposed for sale or sold containing at least one percent by volume methanol or ethanol or ethers must be labeled in a prominent, conspicuous manner," "% METHANOL", "% ETHANOL", or "% ETHERS".

A. Letters on the label must be at least 1 1/2 inches high and in contrasting colors.

B. Labels must be located on the face of each dispenser near the area designating the grade of the product.

R70-940-4. Preparation.

All storage tanks and equipment must be purged and cleansed before using methanol, ethanol or ether blend motor fuels.

R70-940-5. Water Content.

All storage tanks must be kept free from water content.

R70-940-6. Bill of Lading.

Bulk sales of all motor fuels shall be accompanied by a copy of the bill of lading and a delivery ticket containing the following information:

A. Name and address of the vendor and purchaser.

B. Date delivered.

C. Quantity delivered and the quantity upon which the price is based.

D. Identification of the product sold, including grade and indicating the percent of methanol, ethanol or ethers in the blend.

E. The above information must be available at each retail outlet and furnished to the inspector upon request.

R70-940-7. Blending.

A. Blending of motor fuels will be done only at refineries or at retail outlets equipped with calibrated dispensers or tank blenders that accurately measure the products to be blended. The finished blend must meet the requirements of octane, vapor pressure, distillation, and other standards as outlined by ASTM.

A separate fixed tank or a method approved by the Utah State Department of Agriculture and Food shall be used for blending the "methanol or ethanol-based fuel" into the gasoline.

KEY: inspections
February 12, 2002 **4-33-4**
Notice of Continuation October 24, 2001

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

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

R81-1-2. Definitions.

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

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

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

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

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

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

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

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

(8) "DIRECTOR" of a private club means an individual elected by stockholders or members of a private club at an annual meeting to direct organizational and operational policies of the club.

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

(10) "DISPENSING SYSTEM" means a dispensing system or device which dispenses liquor in controlled one ounce quantities and has a meter which counts the number of pours served.

(11) "FAIR MARKET VALUE" means the price at which a willing seller and willing buyer will trade under normal conditions. It means neither panic value, auction value, speculative value, nor a value fixed by depressed or inflated prices. Rather, it is a fair, economic, just and equitable value under normal conditions.

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

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

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

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

(16) "MEMBER" means an individual who regularly pays dues to a private club. Member does not include any corporation or other business enterprise or association, or any other group or association. A member and the member's spouse is entitled to all rights and privileges as provided by the club's bylaws or Utah law.

(17) "POINT OF SALE" means that portion of a package agency, restaurant, private club, or selling area for a single event permittee that has been designated by the department as an alcoholic beverage selling area. It also means that portion of an establishment that sells beer for off-premise consumption where the beer is displayed or offered for sale.

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

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

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

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

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

(23) "WARNING SIGN" means a sign no smaller than six inches high by twelve inches wide, with print no smaller than one half inch bold letters and clearly readable, stating: "Warning: the consumption of alcoholic beverages purchased in this establishment may be hazardous to your health and the safety of others".

R81-1-3. General Policies.

(1) Administrative Policy.

The administration of the department shall be nonpartisan and free of partisan political influence, and operated as a public business using sound management principles and practices. The commission and department shall regulate the sale of alcoholic beverages in a manner and at prices which reasonably satisfy the public demand and protect the public interest including the rights of citizens who do not wish to be involved with alcoholic products.

(2) Official State Label.

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

(3) Labeling.

No licensee or permittee shall sell or deliver any alcoholic beverage in containers not marked, branded or labeled in

conformity with regulations enacted by the agencies of the United States government pertaining to labeling and advertising.

(4) Manner of Paying Fees.

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

(5) Copy of Commission Rules.

Copies of the commission rules shall be available at the department's office, 1625 South 900 West, P. O. Box 30408, Salt Lake City, Utah 84130-0408 for an administrative cost of $20 per copy.

(6) Interest Assessment on Delinquent Accounts.

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

(7) Returned Checks.

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

(a) Insufficient Funds;

(b) Refer to Maker; and

(c) Account Closed.

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

(8) Disposition of unsaleable merchandise.

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

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

R81-1-4. Employees.

The department is an Equal Opportunity Employer.

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

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

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

(2) In the case of public meetings, notice shall be made not less than 24 hours prior to the meeting.

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

(4) The procedure for posting public notice and the definition of public meeting for purposes of these rules, shall be the same as provided in Section 52-4-6.

R81-1-6. Violation Schedule.

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

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

(3) Application of Rule.

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

(b) This rule does not apply to situations where a licensee or permittee fails to maintain the minimum qualifications provided by law for holding a license or permit. These might include failure to maintain a bond or insurance, or a conviction for a criminal offense that disqualifies the licensee from holding the license. These are fundamental licensing requirements and failure to maintain them may result in immediate suspension or forfeiture of the license or permit. Thus, they are not processed in accordance with the Administrative Procedures Act, Title 63, Chapter 46b or Section R81-1-7. They are administered by issuance of an order to show cause requiring the licensee or permittee to provide the commission with proof of qualification to maintain their license or permit.

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

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

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

(ii) prohibit an employee or agent of a licensee or permittee from serving, selling, distributing, manufacturing, wholesaling, warehousing, or handling alcoholic beverages in

the course of employment with any commission licensee for a period determined by the commission;

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

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

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

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

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

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

(ii) Second occurrence of the same type of minor violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a $100 to $500 fine.

(iii) Third occurrence of the same type of minor violation: one to five day suspension of the license or permit and/or a $100 to $500 fine.

(iv) More than three minor violations regardless of type: six day suspension to revocation of the license or permit and/or a $500 to $25,000 fine.

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

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

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

(ii) Second occurrence of the same type of moderate violation: three to ten day suspension of the license or permit and/or a $500 to $1000 fine.

(iii) Third occurrence of the same type of moderate violation: ten to 20 day suspension of the license or permit and/or a $1000 to $2000 fine.

(iv) More than three moderate violations regardless of type: 15 day suspension to revocation of the license or permit and/or a $2000 to $25,000 fine.

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

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

(c) Serious Violations. Violations of this category directly or indirectly affect or potentially affect the public safety, health and welfare, and involve minors. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a five day suspension to revocation of the license or permit and/or up to a $25,000 fine.

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

(ii) Second occurrence of the same type of serious violation: ten to 90 day suspension of the license or permit and/or a $1000 to $9000 fine.

(iii) More than two occurrences of any type of serious violation: 15 day suspension to revocation of the license or permit and/or a $9000 to $25,000 fine.

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

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

(d) Grave Violations. Violations of this category pose or potentially pose, a grave risk to public safety, health and welfare, or may involve fraud, deceit, willful concealment or misrepresentation of the facts, exclusion of competitors' products, tied house trade practices, commercial bribery,

interfering or refusing to cooperate with authorized officials in the discharge of their duties, unlawful importations, or industry supplying liquor to persons other than the department and military installations. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a ten day suspension to revocation of the license or permit and/or up to a $25,000 fine.

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

(ii) More than one occurrence of any type of grave violation: a fifteen day suspension to revocation of the license or permit.

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

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

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

TABLE

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

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

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

R81-1-7. Disciplinary Hearings.

(1) General Provisions.

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

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

(c) Emergency Adjudication Proceedings. The department or commission may issue an order on an emergency basis without complying with the Utah Administrative Procedures Act in accordance with the procedures outlined in Section 63-46b-20.

(d) Utah Administrative Procedures Act. Proceedings under this rule shall be in accordance with Title 63, Chapter 46b, Utah Administrative Procedures Act (UAPA), and Sections 32A-1-119 and -120.

(e) Penalties. This rule shall govern the imposition of any penalty against a commission licensee, permittee, or certificate of approval holder, an employee or agent of a licensee, permittee, or certificate of approval holder, and a manufacturer, supplier or importer whose products are listed in this state. Penalties may include a letter of admonishment, imposition of a fine, the suspension or revocation of a commission license, permit, or certificate of approval, the assessment of costs of action, an order prohibiting an employee or agent of a licensee, permittee, or certificate of approval holder, from serving, selling, distributing, manufacturing, wholesaling, warehousing, or handling alcoholic beverages in the course of employment with any commission licensee, permittee, or certificate of approval holder for a period determined by the commission, the forfeiture of bonds, an order removing a manufacturer's, supplier's or importer's products from the department's sales list and a suspension of the department's purchase of those products for a period determined by the commission, and an order removing the products of a certificate of approval holder from the state approved sales list, and a suspension of the purchase of the products in the state. Department administrative costs are the hourly pay rate plus benefits of each department employee involved in processing and conducting the adjudicative proceedings on the violation, an hourly charge for department overhead costs, the amount billed the department by an independent contractor for services rendered in conjunction with an adjudicative proceeding, and any additional extraordinary or incidental costs incurred by the department.

The commission may also assess additional costs if a respondent fails to appear before the commission at the final stage of the adjudicative process. Department overhead costs are calculated by taking the previous year's total department expenditures less staff payroll charges expended on violations, dividing it by the previous year's total staff hours spent on violations, and multiplying this by a rate derived by taking the previous year's total staff payroll spent on violations to the previous year's total payroll of all office employees. The overhead cost figure shall be recalculated at the beginning of each fiscal year.

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

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

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

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

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

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

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

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

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

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

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

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

(A) encourage settlement;

(B) clarify issues;

(C) simplify the evidence; or

(D) expedite the proceedings.

(k) Definitions. The definitions found in Sections 32A-1-105 and Title 63, Chapter 46b apply to this rule.

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

(m) Default.

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

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

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

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

(2) Pre-adjudication Proceedings.

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

(b) Letters of Admonishment. Because letters of admonishment are not "state agency actions" under Section 63-46b-1(1)(a), no adjudicative proceedings are required in processing them, and they shall be handled in accordance with the following procedures:

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

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

(A) The case number assigned to the action;

(B) The name of the respondent;

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

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

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

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

approval of the commission.

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

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

(A) The case number assigned to the action;

(B) The name of the respondent;

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

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

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

(c) Designation of Informal Adjudicative Proceedings.

(i) All adjudicative proceedings conducted under this rule are hereby designated as informal proceedings.

(ii) If the decision officer determines that the alleged violation warrants commencement of adjudicative proceedings, the matter shall be referred to a presiding officer who shall commence informal adjudication proceedings.

(3) The Informal Process.

(a) Notice of agency action.

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

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

(B) The department's case number;

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

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

(E) A statement that the adjudicative proceeding is to be conducted informally according to the provisions of this rule and Sections 63-46b-4 and -5, and that an informal hearing will be held where the respondent and department shall be permitted to testify, present evidence and comment on the issues;

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

(G) The date, time and place of the scheduled informal hearing;

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

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

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

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

(II) the penalty sought, which may include assessment of costs under Section 32A-1-119(5)(c) if the respondent is found guilty of the alleged violation, and forfeiture of any compliance bond on final revocation under Section 32A-1-119(5)(d) if revocation is sought in the complaint;

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

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

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

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

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

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

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

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

(b) The Prehearing Conference.

(i) The presiding officer may hold a prehearing conference with the respondent and the department to encourage settlement,

clarify issues, simplify the evidence, or expedite the proceedings.

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

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

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

(c) The Informal Hearing.

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

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

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

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

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

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

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

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

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

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

(iv) All testimony shall be under oath.

(v) Discovery is prohibited.

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

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

(viii) Intervention is prohibited.

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

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

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

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

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

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

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

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

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

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

necessary. The continuance of the hearing may also be made upon the motion of the presiding officer when in the public interest.

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

(d) Disposition.

(i) Presiding Officer's Order; Objections.

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

(I) the decision;

(II) the reasons for the decision;

(III) findings of facts;

(IV) conclusions of law;

(V) recommendations for final commission action;

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

(B) The order shall be based on the facts appearing in the department's files and on the facts presented in evidence at the informal hearing. Any finding of fact that was contested may not be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence. The order shall not recommend a penalty more severe than that sought in the notice of agency action.

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

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

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

(ii) Commission Action.

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

(B) The commission shall be deemed a substitute presiding officer for this final stage of the informal adjudicative proceeding pursuant to Sections 63-46b-2(1)(h)(ii)(iii). This stage is not considered a "review of an order by an agency or a superior agency" under Sections 63-46b-12 and -13.

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

(D) After the commission has reached a final decision, it shall issue a signed, written order pursuant to Section 32A-1-119(5) and 63-46b-5(1)(i), containing:

(I) the decision;

(II) the reasons for the decision;

(III) findings of fact;

(IV) conclusions of law;

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

(VI) notice of the right to seek judicial review of the order within 30 days from the date of its issuance in the district court in accordance with Sections 63-46b-14, -15, -17, and -18, and 32A-1-119 and -120.

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

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

(G) The order shall not impose a penalty more severe than that sought in the notice of agency action.

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

(e) Judicial Review.

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

(ii) Appeals from informal adjudicative proceedings shall be to the district court in accordance with Sections 63-46b-15, -17, and -18, and 32A-1-119 and -120.

R81-1-9. Liquor Dispensing Systems.

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

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

(a) dispenses liquor in calibrated one ounce quantities; and

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

The margin of error of the system cannot exceed 1/16 of an ounce or two milliliter variation in pour size.

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

(3) Method of approval.

(a) Suppliers. Companies which manufacture, distribute, sell, or supply dispensing systems must first have their product approved by the department prior to use by any liquor licensee in the state. They shall complete the "Supplier Application for Dispensing System Approval" form provided by the department, which includes: the name, model number, manufacturer and supplier of the product; the type and method of dispensing, calibrating, and metering; the degree or tolerance of error, and a verification of compliance with federal and state laws, rules, and regulations.

(b) Licensees. Before any dispensing system is put into use by a licensee, the licensee shall complete the "Licensee Application for Dispensing System Approval" form provided by the department. The department shall maintain a list of approved products and shall only authorize installation of a product previously approved by the department as provided in

subsection (a). The licensee is thereafter responsible for verifying that the system, when initially installed, meets the specifications which have been supplied to the department by the manufacturer. Once the product is installed, the burden is on the licensee to maintain it to ensure that it continues to meet the manufacturer's specifications. Failure to maintain it may be grounds for suspension or revocation of the licensee's liquor license.

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

(4) Operational restrictions.

(a) The system must be calibrated to pour a one ounce quantity of liquor. The calibration may not be changed or adjusted to pour any alternate quantity.

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

(c) Liquor bottles in use with a dispensing system at the dispensing location must be affixed to the dispensing system by the licensee. Liquor bottles in use with a remote liquor dispensing system must be in a locked storage area. Any other primary liquor not in service must remain unopened. There shall be no opened primary liquor bottles at a dispensing location that are not affixed to an approved dispensing device. This rule does not prohibit the presence of opened containers of wine for use as provided by law.

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

(e) All dispensing systems and devices must conform to the federal Bureau of Alcohol Tobacco and Firearms (BATF) ruling 77-32 which states in part that bar dispensing systems for use by retail liquor dealers "(1) must avoid an in-series hookup which would permit the contents of liquor bottles to flow from bottle to bottle before reaching the dispensing spigot or nozzle, (2) must not dispense from or utilize containers other than original liquor bottles filled, stamped, and labeled in conformity with ATF regulations, (3) must prohibit the intermixing of different kinds of products or brands in the liquor bottles from which they are being dispensed...." BATF ruling 77-32 (1977) is incorporated by reference.

(f) Pursuant to federal law, all liquor dispensed through a dispensing system shall be from its original container, and there shall be no re-use or refilling of liquor bottles with any substance whatsoever. The commission adopts federal regulations 27 CFR 194 and 26 USCA Section 5301 and incorporates them by reference.

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

(i) brands and container sizes of liquor dispensed through the dispensing system;

(ii) number of one ounce portions dispensed through the dispensing system by brand or sales price level;

(iii) number of one ounce portions sold by brand or sales price level; and

(iv) beginning and ending meter readings by brand or sales price level to correlate with cost and sales totals by brand or sales price level. These records must be made available for inspection and audit by the department or law enforcement.

(h) Each licensee shall file with the department a complete price list which includes the selling price, by brand, of each mixed drink dispensed through a metered dispensing system. The licensee or his agent shall not:

(i) sell more than one mixed drink to a patron for a single price;

(ii) establish a single price based on the required purchase of more than one mixed drink; or

(iii) sell a mixed drink at a price that is reduced from the usual established price on the list the licensee has on file with the department.

This rule does not prohibit the sale of pitchers of mixed drinks as long as the pitcher contains one ounce of primary liquor per person to which the pitcher is served.

(i) Licensees shall display in a prominent place on the premises a list of the types and brand names of liquor being served through its dispensing system. This requirement may be satisfied either by printing the list on an alcoholic beverage menu or by wall posting or both. No lists which are wall posted on the premises of a restaurant licensee may be larger than 8 1/2 by 11 inches.

A licensee or his employee shall not:

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

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

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

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

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

R81-1-10. Wine Dispensing.

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

(a) brands and container sizes of each wine dispensed by the glass;

(b) number of five ounce portions dispensed of each wine by brand and sales price level; and

(c) number of five ounce portions sold by brand and sales price level.

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

(2) The licensee or his agent shall not:

(a) sell more than one five ounce glass of wine to a patron for a single price;

(b) establish a single price based on the required purchase of more than one five ounce glass of wine; or

(c) sell a five ounce glass of wine at a price that is reduced from the usual established price.

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

(1) For the purposes of this rule:

(a) "premises" as defined in Section 32A-1-105(36) shall include the location of any licensed restaurant, club, or on-premise beer retailer facility or facilities operated or managed by the same person or entity that are located within the same building or complex. Multiple licensed facilities shall be termed "qualified premises" as used in this rule.

(b) the terms "sell", "sale", "to sell" as defined in Section 32A-1-105(47) shall not apply to a cost allocation of alcoholic beverages as used in this rule.

(c) "cost allocation" means an apportionment of the as purchased cost of the alcoholic beverage product based on the amount dispensed in each outlet as reconciled by the record keeping requirements of this rule.

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

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

(a) for liquor and wine dispensing, daily dispensing records as required in R81-1-9(4)(g) and R81-1-10(1) must also show the amount of alcoholic beverage products dispensed to each licensed location;

(b) for beer dispensing, daily records must be kept in a form acceptable to the department that show the amount of beer dispensed to each outlet;

(c) point of sale control systems must be implemented that will record the amounts of each alcoholic beverage product sold in each location. Sales records and dispensing records must be balanced daily;

(d) cost allocation of the alcoholic beverage product cost must be made for each location on at least a monthly basis. Allocations must be able to be supported by the record keeping requirements of Section 32A-4-106(26)(27)(32), or 32A-5-107(11)(12)(15)(16)(17), or 32A-10-206(13);

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

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

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

(h) a licensee must obtain department approval before dispensing alcoholic beverages as described in this section. Applications for approval shall be in a form prescribed by the department and shall include a floor plan of all storage, dispensing, sales, service, and consumption areas involved.

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

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

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

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

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

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

(1) The alcohol training and education seminar, as described in Section 62A-8-103.5, shall be completed by every employee of every new and renewing licensee under Title 32A who sells or furnishes alcoholic beverages to the public within the scope of his employment for consumption on the premises. Employees must complete the training within 30 days of commencing employment. Each licensee shall maintain current records on each employee indicating: (1) date of hire, and (2) date of completion of training.

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

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

(b) recognizing the problem drinker;

(c) an overview of state alcohol laws;

(d) dealing with problem customers; and

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

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

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

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

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

(2) Authority. The authority for this rule is Sections 63-2-204, and 63-2-904 of the Government Records Access and Management Act (GRAMA).

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

(4) Fees. A fee schedule for the direct and indirect costs of duplicating or compiling a record may be obtained from the

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

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

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

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

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

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

(1) Authority and Purpose. This rule is promulgated pursuant to Section 63-46a-3(3). The commission, pursuant to 28 CFR 35.107, July 1, 1992 Ed., adopts, defines, and publishes within this rule complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act, with the commission or the department.

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

(3) Definitions.

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

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

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

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

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

(4) Filing of Complaints.

(a) The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 60 days from the date of the alleged act of discrimination. 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 commission's and department's ADA coordinator in writing or in another accessible format suitable to the individual.

(c) Each complaint shall:

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

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

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

(iv) describe the action and accommodation desire; and

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

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

(5) Investigation of Complaint.

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

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

(6) Issuance of Decision.

(a) Within 15 working days after receiving the complaint, the ADA coordinator shall issue a decision outlining in writing

or in another acceptable suitable format stating what action, if any, shall be taken on the complaint.

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

(7) Appeals.

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

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

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

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

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

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

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

(8) Classification of records. The record of each complaint and appeal, and all written records produced or received as part of the action, shall be classified as protected as defined under Section 63-2-304 until the ADA coordinator, executive director, or their designees issue the decision, at which time any portions of the record which may pertain to the individual's medical condition shall remain classified as private as defined under Section 63-2-302, or controlled as defined in Section 63-2-303. All other information gathered as part of the complaint record shall be classified as private information. Only the written decision of the ADA coordinator, executive director, or designees shall be classified as public information.

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

R81-1-15. Commission Declaratory Orders.

(1) Authority. As required by Section 63-46b-21, and as authorized by Section 32A-1-107, this rule provides the procedures for the submission, review, and disposition of petitions for commission declaratory orders on the applicability of statutes administered by the commission and department, rules promulgated by the commission, and orders issued by the commission.

(2) Petition Procedure.

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

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

(3) Petition Form. The petition shall:

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

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

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

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

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

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

(g) be signed by the petitioner.

(4) Petition Review and Disposition.

(a) The commission shall:

(i) review and consider the petition;

(ii) prepare a declaratory order stating:

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

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

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

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

(b) The commission may:

(i) interview the petitioner;

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

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

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

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

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

(1) The Alcoholic Beverage Control Act generally disqualifies any person, licensee, or, in the case of a partnership or a corporation, a partner, manager, officer, director, or

shareholder with more than 20% of the issued and outstanding stock, from being an employee of the department, receiving a license, or being an employee of a licensee if they have been convicted of:

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

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

(c) any crime involving moral turpitude.

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

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

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

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

R81-1-17. Advertising.

(1) Purpose.

(a) Recognizing the rulings of the United States Supreme Court in 44 Liquormart, Inc. v. Rhode Island, 517 U.S. 484 (1996), and Lorillard Tobacco Co. v. Reilly, 121 S. Ct. 2404 (2001), and the Tenth Circuit Court of Appeals in Utah Licensed Beverage Association v. Leavitt, 256 F3d 1061 (10th Cir. 2001), this rule interprets Utah statutes and rules relating to the advertising of alcoholic beverages in a manner to preserve their constitutionality, and to identify such statutes and rules that the state will not enforce.

(b) No provision of this rule shall be construed as a concession that any current law or rule is unconstitutional. All statutes shall remain in full force and effect unless expressly suspended by this rule. To the extent any statute or rule is inconsistent with this rule, this rule shall govern.

(2) Definitions.

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

(i) labels on products; or

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

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

(3) Authority. This rule is enacted under the authority of Sections 63-46a-3, 32A-1-107, and 32A-12-401(2)(f) and (5).

(4) Application.

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

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

(5) Current statutes and rules restricting the advertising, display, or display of price lists of liquor products, as defined in 32A-1-105(23), by the department, state stores, or type 1, 2 or 3 package agencies as defined in R81-3-1, are applicable and enforceable.

(6) By this rule, the statutory provisions of Sections 32A-4-106(5)(d), 32A 4 106(21)(a) and (b), 32A-4-206(5)(c), 32A-6-105(7), 32A 7 106(2)(m), 32A 12 401(2)(a) through (e), (3) and (4), to the extent they restrict the advertising of liquor, as defined in 32A-1-105(23), and beer, as defined in 32A 1 105(4), by manufacturers, wholesalers, permittees, licensed retailers of such products, and type 4 and 5 package agencies as defined in R81-3-1, are suspended. Instead, all advertising of liquor and beer by these entities shall comply with the advertising requirements listed in Section (10) of this rule.

(7) Current statutes and rules restricting private club public solicitation or public advertising calculated to increase club membership are applicable and enforceable.

(8) All trade practice restrictions provided by Section 32A 12 603 regulating things of value that liquor and beer industry members, as defined in 32A 12 601, may provide to liquor and beer retailers are applicable and enforceable with the following amendments:

(a) any on premise beer retailer may be provided, receive and use things of value from beer industry members to the same extent authorized for any tavern licensee;

(b) a restaurant liquor licensee may be provided, receive and use things of value from beer industry members to the same extent authorized for any beer licensee or permittee; and

(c) product displays, inside signs, and consumer and retailer advertising specialties relating to liquor and beer products may be provided and displayed in compliance with the advertising guidelines of Section (10) to the extent authorized by this rule and federal law (see 27 CFR 6.84), to include being visible on and off the retailer's premise.

(9) Sections 32A 12 606(1), (2), and (3) relating to unlawful acts involving consumers are applicable and enforceable. Section 32A-12-606(4) which establishes guidelines for alcoholic beverage industry members or retailers to sponsor or underwrite athletic, theatrical, scholastic, artistic, or scientific events is applicable and enforceable with the following amendments:

(a) the guidelines for any alcoholic beverage advertising associated with the event are those listed in Section (10) of this rule;

(b) industry members or retailers are not precluded from sponsoring a theatrical, artistic, or scientific event that involves the display of drinking scenes; and

(c) industry members or retailers may not sponsor an event that takes place on the premises of a school, college, university, or other educational institution.

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

(a) May not violate any federal laws referenced in Subparagraph (4);

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

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

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

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

(f) May not advertise any promotional scheme such as "happy hour" or "all you can drink for $...".

(g) May not encourage or condone drunk driving;

(h) May not depict the act of drinking;

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

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

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

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

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

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

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

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

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

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

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

(m) May not offer alcoholic beverages to the general public without charge;

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

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

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

R81-1-18. Pilot Wine Tasting Program.

(1) Purpose. To implement and operate a pilot program by which local industry representatives may conduct retail licensee tastings of cork-finished wines at the department's administrative office complex.

(2) Authority. The authority for this rule is Section 32A-12-603(20) of the Alcoholic Beverage Control Act.

(3) Definitions.

(a) "Local industry representative" or "representative" means an individual, corporation, partnership, or limited liability company licensed by the commission under Section 32A-8-501 to represent cork-finished wine products of a manufacturer, supplier, or importer with the department, package agencies, licensees and permittees in this state, or any of the representative's employees.

(b) "Promotional tasting of wines" means conduct statutorily prohibited by Sections 32A-8-505(2), (6), and (7), 32A-12-201, 32A-12-208, 32A-12-603, and 32A-12-606.

(c) "Promotional tasting of wines" does not include:

(i) conduct authorized or excepted by Sections 32A-1-501 through -504, 32A-12-603(2), (3), (9), (10), and (20), 32A-12-606; or

(ii) conduct otherwise specifically allowed by law.

(d) "Retailer" means the holder of a private club or restaurant liquor license issued by the commission under Chapters 32A-4 and 32A-5, or any of the club's or restaurant's employees.

(e) "DABC" means the Department of Alcoholic Beverage Control.

(4) Check-out procedures.

(a) All cork-finished wines used in this program shall be checked out by a local industry representative from the department's club and restaurant store located at 1675 South 900 West, Salt Lake City, Utah.

(b) The wines shall be checked out during the store's regular business hours, excluding any recognized state or federal holiday, and the day preceding the holiday. The representative shall allow at least 24 hours from the time the order is placed until the wine is checked out

(c) At the time of check-out, each representative shall sign a purchase form which shall include the representative's DABC license number, a list of the wines checked out, and a statement that the wines will be used only for tasting sessions conducted under this program. The form shall be in triplicate: one shall remain at the club and restaurant store; one shall accompany the wines when the representative checks them in at the tasting session; and one shall be the representative's receipt.

(d) Store personnel shall affix a bright colored label to each wine bottle which reads "Retailer Sample" to identify it for use in the pilot wine tasting program.

(e) Each representative shall pay full retail price (including markup and taxes) for each bottle of wine checked out.

(5) Special order and transfer procedures.

(a) Wines used in this program shall be products listed by the department or special ordered by the representative in accordance with department policy P96-03-04.

(b) No wines shall be transferred from other state liquor stores, but may be transferred from stock available in the central administrative warehouse, including special orders.

(6) Procedures for tasting sessions.

(a) All tasting sessions under this program shall be done in the department's administrative office building in rooms designated by the department.

(b) Sessions shall be held at least on a weekly basis on days and at times designated by the department.

(c) Representatives shall schedule a tasting session with the department at least one week in advance.

(d) Tasting sessions may be attended by representatives and their employees, manufacturers, suppliers, and importers; retailers and their employees; and supervisory staff of the department.

(e) The department may put a reasonable maximum limit on the total number of attendees.

(f) All persons attending the tasting other than department staff must sign an attendance form. Representatives and their employees, and retailers and their employees shall also enter their DABC license number on the form.

(g) The representative is responsible for transporting to the tasting session all wines checked out from the club and restaurant store. All wines checked out must be checked in to the department within seven (7) calendar days. The wines must be returned as a group and not piecemeal. The representative shall present a copy of the purchase form and pay the administrative per bottle fee set by the commission before participating in the session.

(h) Once the wines are brought to the session, they shall be checked in by the department, and may not leave the premises of the department's administrative office building except for disposition by the department. The department shall store wines for representatives for use at future tasting sessions, but not more than seven days from the date of purchase. The department shall maintain a record of each bottle returned.

(i) The department shall provide tables for the tasting sessions.

(j) The representatives shall provide their own buckets, glasses, openers, napkins, and food for the tasting sessions.

(k) Participants shall follow accepted protocol for wine tasting, and may not consume the wine.

(l) Any tasting session is subject to video taping at the discretion of the department. No audio taping shall be done.

(m) The representatives are responsible for dumping buckets and unused portions of wine, and cleaning up the tasting area at the conclusion of each tasting session.

(n) The department shall dispose of the wine as provided in Section 32A-12-603(3)(j) or -603(6).

(7) Administrative fee. In addition to the full retail price, the commission shall set an administrative fee for each bottle purchased under this program, and may periodically review the fee to ensure that it is sufficient to defray the department's actual, ordinary, and necessary costs directly incurred in administering this program.

(8) Penalties for Non-Compliance. Any representative or retail licensee who engages or participates in any promotional tasting of wines at any location in the state other than as allowed under this program may have their license suspended or revoked.

(9) Report to Legislature. The commission shall prepare a report of the program and file it with the Legislature before November 1, 1999.

(10) Duration of program. This program shall be in effect from July 1, 1998.

R81-1-19. Emergency Meetings.

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

(2) Authority. This rule is enacted under the authority of Sections 63-46a-3 and 32A-1-107.

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

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

(b) Public notice of the emergency meeting shall be

provided as soon as practicable and shall include at a minimum the following:

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

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

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

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

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

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

R81-1-20. Electronic Meetings.

(1) Purpose. Utah Code Section 52-4-7.8 requires any public body that convenes or conducts an electronic meeting to establish written procedures for such meetings. This rule establishes procedures for conducting commission meetings by electronic means.

(2) Authority. This rule is enacted under the authority of Sections 52-4-7.8, 63-46a-3 and 32A-1-107.

(3) Procedure. The following provisions govern any meeting at which one or more commissioners appear telephonically or electronically pursuant to Utah Code Section 52-4-7.8:

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

(b) Notice of the meeting and the agenda shall be posted at the anchor location. Written or electronic notice shall also be provided to at least one newspaper of general circulation within the state and to a local media correspondent. These notices shall be provided at least 24 hours before the meetings.

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

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

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

KEY: alcoholic beverages
March 1, 2002 **32A-1-107**
Notice of Continuation December 26, 2001 **32A-1-119(5)(c)**
32A-3-103(1)(a)
32A-4-103(1)(a)
32A-4-203(1)(a)
32A-5-103(3)(c)
32A-6-103(2)(a)
32A-7-103(2)(a)
32A-8-103(1)(a)
32A-9-103(1)(a)
32A-10-203(1)(a)
32A-11-103(1)(a)

R81. Alcoholic Beverage Control, Administration.
R81-11. Beer Wholesalers.
R81-11-1. Application.

An application for a beer wholesaler license shall be included in the agenda of the monthly commission meeting for consideration for issuance of a beer wholesaler license when the requirements of Section 32A-11-102, -103 and -105 have been met, and a completed application has been received by the department.

R81-11-2. Transfer of License.

The holder of one or more wholesaler licenses may assign and transfer the license to any qualified person in accordance with the provisions of these rules. However, no assignment and transfer may result in both a change of license and change of location.

R81-11-3. Conditions of Transfer.

(1) The holder of the wholesaler license shall first execute a proposed assignment and transfer of the license. The assignee/transferee shall apply to the commission for approval of the assignment and transfer, and shall furnish any information the commission may require.

(2) The assignment and transfer shall not be of any force and effect until the commission has approved it.

(3) The assignee/transferee shall not take possession of the premises, or exercise any of the rights of a license until the commission has approved the assignment and transfer.

(4) No assignment and transfer shall be made within thirty days after the holder of a wholesaler license has been granted a change of location.

(5) No change of location shall be granted within ninety days after assignment and transfer of a wholesaler license.

(6) In approving any assignment and transfer of a wholesaler license, the commission may impose special conditions relating to any future connection of the former licensee or any of his employees with the business of the assignee or transferee.

(a) Prior to the imposition of any special conditions, the commission shall hold a hearing to allow the former licensee or any of his employees to attend and provide information to the commission.

(b) The commission shall provide written notice to all parties involved at least ten days prior to the hearing.

(7) No wholesaler license may be assigned to any person who does not qualify for the license under Sections 32A-11-102, and -103.

R81-11-4. Change of Trade Name.

A change of trade name may coincide with the transfer of the wholesaler license, with the commission's approval. Any licensed wholesaler may adopt a trade name or change the trade name by applying to the commission on forms provided by the department and upon receiving the commission's approval.

R81-11-5. Change in Partners.

If the wholesaler licensee is a partnership, the sale of a partnership interest or any change in partners shall be considered an assignment and transfer of the wholesaler license held by one partnership within the meaning of R81-11-3. However, if the wholesaler licensee is a partnership, and a partner should die dissolving the partnership, that partnership license shall remain in effect on a temporary basis for one month, unless or until the commission directs otherwise.

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1994 32A-1-107
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R81. Alcoholic Beverage Control, Administration.
R81-12. Manufacturer Representative (Distillery, Winery, Brewery).
R81-12-1. Application.

An application for a local industry representative license shall be included in the agenda of the monthly commission meeting for consideration for issuance of a license when the requirements of 32A-8-502 and -503 have been met, and a completed application has been received by the department.

R81-12-2. Industry Participation in Educational Seminars Involving Liquor, Wine and Heavy Beer Products.

(1) Authority. This rule is pursuant to 32A-12-201(2), 32A-12-603(2), 32A-12-603(9), and 32A-12-606. These provisions preclude industry members from soliciting or canvassing for orders, or otherwise furnishing or supplying liquor, wine, and heavy beer products to another within this state other than the department and military installations; preclude industry members from supplying anything of value except as allowed by law; preclude industry members from giving away any of its alcoholic products to any person except for testing, analysis, and sampling purposes by the department, local industry representative licensees, and licensed alcoholic beverage retailers to the extent authorized by the Act; allow industry members to participate in educational seminars involving the department, retailers, holders of educational or scientific special use permits, or other industry members under certain conditions, but preclude the use of samples at such seminars; and allow industry members to serve alcoholic products to others at private social functions hosted by the industry member so long as the product is not served as part of a promotion of its products or as a subterfuge to provide samples to others for product testing, analysis, or sampling purposes.

(2) Definitions. For purposes of this rule:

(a) "Educational seminar" means an educational class involving the study of alcoholic beverages attended only by students who have registered in advance for the course, a privately-hosted event or social function held by a private group engaged in the study of alcoholic beverages, and a private training session held by a retailer for the purpose of educating the retailer and the retailer's employees of the qualities and characteristics of alcoholic beverages. An educational seminar does not include a seminar to which the general public is invited to attend.

(b) "Industry member" means a liquor, wine or heavy beer manufacturer, supplier, importer, wholesaler, or any of its affiliates, subsidiaries, officers, directors, agents, employees, or representatives.

(c) "Privately-hosted event" or "private social function" means a specific social, business, or recreational event for which an entire room, area, or hall has been leased, rented, or reserved, in advance by an identified group, and the event or function is limited in attendance to people who have been specifically designated and their guests. Privately-hosted event" and "private social function" does not include an event or function to which the general public is invited whether for an admission fee or not.

(d) "Retailer" means the holder of an alcoholic beverage license or permit issued by the commission to allow the holder to engage in the sale of alcoholic beverages to consumers, or any of the holder's agents, officers, directors, shareholders, partners, or employees.

(e) "Sample" means liquor, wine and heavy beer that is placed in the possession of the department for testing, analysis, and sampling by the department, for use in a trade show conducted by the department, or for testing, analysis, and sampling by local industry representatives on the premises of the department. Samples are furnished by industry members to the department for these purposes at no cost, and are labeled by the department as samples. Sample does not include liquor, wine and heavy beer that is sold by the department at retail after taxes and markup have been included.

(3) General Purpose. This rule authorizes industry representatives, under certain restrictions, to attend and participate in educational seminars where liquor, wine and heavy beer products are analyzed, tested, and tasted.

(4) Application of Rule.

(a) An industry member may attend and participate in an educational seminar where liquor, wine and heavy beer products are analyzed, tested, and tasted only as the invited guest of the host of the seminar. An industry member may not directly or indirectly host, organize, or otherwise arrange for an educational seminar where such products are present.

(b) Liquor, wine and heavy beer products used at an educational seminar must be purchased by the host from the department at full retail. An industry member may not directly or indirectly furnish or otherwise provide the liquor, wine and heavy beer products for the seminar. No liquor, wine or heavy beer samples may be present or used at an educational seminar. Tastings involving samples may occur only at department trade shows or on the department's premises in accordance with Section 32A-12-603(9)(b).

(c) Industry members may be invited by the host to lecture, and analyze, test, and taste the liquor, wine and heavy beer products during their presentation at an educational seminar.

(d) An educational seminar where liquor, wine and heavy beer products are present may not be used by industry members to introduce retailers to new products which are not presently listed by the department for sale in this state. Department trade shows are provided for this purpose.

(e) An educational seminar may not be open to the general public, and there shall be no public advertising of the seminar.

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R156. Commerce, Occupational and Professional Licensing.
R156-1. General Rules of the Division of Occupational and Professional Licensing.
R156-1-101. Title.

These rules are known as the General Rules of the Division of Occupational and Professional Licensing.

R156-1-102. Definitions.

In addition to the definitions in Title 58, as used in Title 58 or these rules:

(1) "Active and in good standing" means a licensure status which allows the licensee full privileges to engage in the practice of the occupation or profession subject to the scope of the licensee's license classification.

(2) "Cancel" or "cancellation" means nondisciplinary action by the division to rescind, repeal, annul, or void a license issued in error. Such action includes rescinding a license issued to an applicant whose payment of the required application fee is dishonored when presented for payment.

(3) "Charges" means the acts or omissions alleged to constitute either unprofessional or unlawful conduct or both by a licensee, which serve as the basis to consider a licensee for inclusion in the diversion program authorized in Section 58-1-404.

(4) "Denial of licensure" means action by the division refusing to issue a license to an applicant for initial licensure, renewal of licensure, reinstatement of licensure or relicensure.

(5) "Disciplinary action" means adverse licensure action by the division under the authority of Subsections 58-1-401(2)(a) through (2)(b).

(6) "Diversion agreement" means a formal written agreement between a licensee, the division, and a diversion committee, outlining the terms and conditions with which a licensee must comply as a condition of entering in and remaining under the diversion program authorized in Section 58-1-404.

(7) "Diversion committees" mean diversion advisory committees authorized by Subsection 58-1-404(2)(a) and created under Subsection R156-1-404a.

(8) "Duplicate license" means a license reissued to replace a license which has been lost, stolen, or mutilated.

(9) "Emergency review committees" mean emergency adjudicative proceedings review committees created by the division under the authority of Subsection 58-1-108(2).

(10) "Expire" or "expiration" means the automatic termination of a license which occurs:

(a) at the expiration date shown upon a license if the licensee fails to renew the license before the expiration date; or

(b) prior to the expiration date shown on the license:

(i) upon the death of a licensee who is a natural person;

(ii) upon the dissolution of a licensee who is a partnership, corporation, or other business entity; or

(iii) upon the issuance of a new license which supersedes an old license, including a license which:

(A) replaces a temporary license;

(B) replaces a student or other interim license which is limited to one or more renewals or other renewal limitation; or

(C) is issued to a licensee in an upgraded classification permitting the licensee to engage in a broader scope of practice in the licensed occupation or profession.

(11) "Inactive" or "inactivation" means action by the division to place a license on inactive status in accordance with Sections 58-1-305 and R156-1-305.

(12) "Investigative subpoena authority" means, except as otherwise specified in writing by the director, the division enforcement counsel, or if the division enforcement counsel is unable to so serve for any reason, the assistant director, or if both the division enforcement counsel and the assistant director are unable to so serve for any reason, the department enforcement counsel.

(13) "License" means a right or privilege to engage in the practice of a regulated occupation or profession as a licensee.

(14) "Limit" or "limitation" means nondisciplinary action placing either terms and conditions or restrictions or both upon a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(15) "Nondisciplinary action" means adverse licensure by the division under the authority of Subsections 58-1-401(1) or 58-1-401(2)(c) through (2)(d).

(16) "Peer committees" mean advisory peer committees to boards created by the legislature in Title 58 or by the division under the authority of Subsection 58-1-203(6).

(17) "Private reprimand" means disciplinary action to formally reprove or censure a licensee for unprofessional or unlawful conduct, with the documentation of the action being classified as a private record.

(18) "Probation" means disciplinary action placing terms and conditions upon a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(19) "Public reprimand" means disciplinary action to formally reprove or censure a licensee for unprofessional or unlawful conduct, with the documentation of the action being classified as a public record.

(20) "Regulatory authority" as used in Subsection 58-1-501(2)(d) means any governmental entity who licenses, certifies, registers, or otherwise regulates persons subject to its jurisdiction, or who grants the right to practice before or otherwise do business with the governmental entity.

(21) "Reinstate" or "reinstatement" means to activate an expired license or to restore a license which is restricted, as defined in Subsection (19)(b), or is suspended, or placed on probation, to a lesser restrictive license or an active in good standing license.

(22) "Relicense" or "relicensure" means to license an applicant who has previously been revoked or has previously surrendered a license.

(23) "Remove or modify restrictions" means to remove or modify restrictions, as defined in Subsection (19)(a), placed on a license issued to an applicant for licensure.

(24) "Restrict" or "restriction" means disciplinary action qualifying or limiting the scope of a license:

(a) issued to an applicant for initial licensure, renewal or

reinstatement of licensure, or relicensure in accordance with Section 58-1-304; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(25) "Revoke" or "revocation" means disciplinary action by the division extinguishing a license.

(26) "Suspend" or "suspension" means disciplinary action by the division removing the right to use a license for a period of time or indefinitely as indicated in the disciplinary order, with the possibility of subsequent reinstatement of the right to use the license.

(27) "Surrender" means voluntary action by a licensee giving back or returning to the division in accordance with Section 58-1-306, all rights and privileges associated with a license issued to the licensee.

(28) "Temporary license" or "temporary licensure" means a license issued by the division on a temporary basis to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-303.

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

(30) "Warning or final disposition letters which do not constitute disciplinary action" as used in Subsection 58-1-108(3) mean letters which do not contain findings of fact or conclusions of law and do not constitute a reprimand, but which may address any or all of the following:

(a) division concerns;

(b) allegations upon which those concerns are based;

(c) potential for administrative or judicial action; and

(d) disposition of division concerns.

R156-1-103. Authority - Purpose.

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

R156-1-107. Organization of Rules - Content, Applicability and Relationship of Rules.

(1) The rules and sections in Title R156 shall, to the extent practicable, follow the numbering and organizational scheme of the chapters in Title 58.

(2) Rule R156-1 shall contain general provisions applicable to the administration and enforcement of all occupations and professions regulated in Title 58.

(3) The provisions of the other rules in Title R156 shall contain specific or unique provisions applicable to particular occupations or professions.

(4) Specific rules in Title R156 may supplement or alter Rule R156-1 unless expressly provided otherwise in Rule R156-1.

R156-1-109. Presiding Officers.

In accordance with Subsection 63-46b-2(1)(h) and Section 58-1-109, except as otherwise specified in writing by the director, the designation of presiding officers is clarified or established as follows:

(1) The division enforcement counsel is designated as the presiding officer for issuance of notices of agency action and for issuance of notices of hearing issued concurrently with a notice of agency action or issued in response to a request for agency action, provided that if the division enforcement counsel is unable to so serve for any reason, the assistant director is designated as the alternate presiding officer.

(2) Subsections 58-1-109(2) and 58-1-109(4) are clarified with regard to defaults as follows. Except as otherwise specified in writing by the director, the department administrative law judge is designated as the presiding officer for entering an order of default against a party, for conducting any further proceedings necessary to complete the adjudicative proceeding, and for issuing a recommended order to the director determining the discipline to be imposed, licensure action to be taken, relief to be granted, etc.

(3) Except as otherwise specified in writing by the director, the presiding officer for adjudicative proceedings initiated by a request for agency action are as follows:

(a) Director. The director shall be the presiding officer for the informal adjudicative proceedings described in Subsections R156-46b-202(1)(g), (i),(k), (l),(o), (q), and (t).

(b) Bureau managers or program coordinators. The bureau manager or program coordinator over the occupation or profession or program involved shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsections R156-46b-201(1)(a) through (c) and R156-46b-201(e). The authority of the presiding officer in formal adjudicative proceedings described in R156-46b-201(1)(e) shall be limited to approval of claims, conditional denial of claims, and final denial of claims based upon jurisdictional defects; and

(ii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(a) through (f), (h), (i), (j),(p), (r) and (s).

(iii) At the direction of the a bureau manager or program coordinator, a licensing technician or program technician may sign an informal order in the name of the licensing technician or program technician provided the wording of the order has been approved in advance by the bureau manager or program coordinator and provided the caption "FOR THE BUREAU MANAGER" or "FOR THE PROGRAM COORDINATOR" immediately precedes the licensing technician's or program technician's signature.

(c) Contested citation hearing officer. The contested citation hearing officer designated in writing by the director shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(m).

(d) Uniform Building Code Commission. The Uniform Building Code Commission shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(n).

(4) Except as otherwise specified in writing by the director, the presiding officer for informal adjudicative proceedings initiated by a notice of agency action shall be the division director.

R156-1-110. Issuance of Investigative Subpoenas.

(1) All requests for subpoenas in conjunction with a division investigation made pursuant to Subsection 58-1-106(3), shall be made in writing to the investigative subpoena authority

and shall be accompanied by an original of the proposed subpoena.

(a) Requests to the investigative subpoena authority shall contain adequate information to enable the subpoena authority to make a finding of sufficient need, including: the factual basis for the request, the relevance and necessity of the particular person, evidence, documents, etc., to the investigation, and an explanation why the subpoena is directed to the particular person upon whom it is to be served.

(b) Approved subpoenas shall be issued under the seal of the division and the signature of the subpoena authority.

(2) The investigative subpoena authority may quash or modify an investigative subpoena if it is shown to be unreasonable or oppressive.

R156-1-205. Peer or Advisory Committees - Executive Director to Appoint - Terms of Office - Vacancies in Office - Removal from Office - Quorum Requirements - Appointment of Chairman - Division to Provide Secretary - Compliance with Open and Public Meetings Act - Compliance with Utah Administrative Procedures Act - No Provision for Per Diem and Expenses.

(1) The executive director shall appoint the members of peer or advisory committees established under Title 58 or Title R156.

(2) Except for ad hoc committees whose members shall be appointed on a case-by-case basis, the term of office of peer or advisory committee members shall be for four years. The executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the peer or advisory committee is appointed every two years.

(3) No peer or advisory committee member may serve more than two full terms, and no member who ceases to serve may again serve on the peer or advisory committee until after the expiration of two years from the date of cessation of service.

(4) If a vacancy on a peer or advisory committee occurs, the executive director shall appoint a replacement to fill the unexpired term. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(5) If a peer or advisory committee member fails or refuses to fulfill the responsibilities and duties of a peer or advisory committee member, including the attendance at peer committee meetings, the executive director may remove the peer or advisory committee member and replace the member in accordance with this section. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(6) Committee meetings shall only be convened with the approval of the appropriate board and the concurrence of the division.

(7) Unless otherwise approved by the division, peer or advisory committee meetings shall be held in the building occupied by the division.

(8) A majority of the peer or advisory committee members shall constitute a quorum and may act in behalf of the peer or advisory committee.

(9) Peer or advisory committees shall annually designate one of their members to serve as peer or advisory committee chairman. The division shall provide a division employee to act as committee secretary to take minutes of committee meetings and to prepare committee correspondence.

(10) Peer or advisory committees shall comply with the procedures and requirements of Title 52, Chapter 4, Open and Public Meetings, in their meetings.

(11) Peer or advisory committees shall comply with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, in their adjudicative proceedings.

(12) Peer or advisory committee members shall perform their duties and responsibilities as public service and shall not receive a per diem allowance, or traveling or accommodations expenses incurred in peer or advisory committees business, except as otherwise provided in Title 58 or Title R156.

R156-1-206. Emergency Adjudicative Proceeding Review Committees - Appointment - Terms - Vacancies - Removal - Quorum - Chairman and Secretary - Open and Public Meetings Act - Utah Administrative Procedures Act - Per Diem and Expenses.

(1) The chairman of the board for the profession of the person against whom an action is proposed may appoint the members of emergency review committees on a case-by-case or period-of-time basis.

(2) With the exception of the appointment and removal of members and filling of vacancies by the chairman of a board, emergency review committees, committees shall serve in accordance with Subsections R156-1-205(7), and (9) through (12).

R156-1-301. Cheating on Examinations.

(1) Policy.

The passing of an examination, when required as a condition of obtaining or maintaining a license issued by the division, is considered to be a critical indicator that an applicant or licensee meets the minimum qualifications for licensure. Failure to pass an examination is considered to be evidence that an applicant or licensee does not meet the minimum qualifications for licensure. Accordingly, the accuracy of the examination result as a measure of an applicant's or licensee's competency must be assured. Cheating by an applicant or licensee on any examination required as a condition of obtaining a license or maintaining a license shall be considered unprofessional conduct and shall result in imposition of an appropriate penalty against the applicant or licensee.

(2) Cheating Defined.

Cheating is defined as the use of any means or instrumentality by or for the benefit of an examinee to alter the results of an examination in any way to cause the examination results to inaccurately represent the competency of an examinee with respect to the knowledge or skills about which they are examined. Cheating includes:

(a) communication between examinees inside of the examination room or facility during the course of the examination;

(b) communication about the examination with anyone outside of the examination room or facility during the course of

the examination;

(c) copying another examinee's answers or looking at another examinee's answers while an examination is in progress;

(d) permitting anyone to copy answers to the examination;

(e) substitution by an applicant or licensee or by others for the benefit of an applicant or licensee of another person as the examinee in place of the applicant or licensee;

(f) use by an applicant or licensee of any written material, audio material, video material or any other mechanism not specifically authorized during the examination for the purpose of assisting an examinee in the examination;

(g) obtaining, using, buying, selling, possession of or having access to a copy of the examination prior to administration of the examination.

(3) Action Upon Detection of Cheating.

(a) The person responsible for administration of an examination, upon evidence that an examinee is or has been cheating on an examination shall notify the division of the circumstances in detail and the identity of the examinees involved with an assessment of the degree of involvement of each examinee;

(b) If cheating is detected prior to commencement of the examination, the examinee may be denied the privilege of taking the examination; or if permitted to take the examination, the examinee shall be notified of the evidence of cheating and shall be informed that the division may consider the examination to have been failed by the applicant or licensee because of the cheating; or

(c) If cheating is detected during the examination, the examinee may be requested to leave the examination facility and in that case the examination results shall be the same as failure of the examination; however, if the person responsible for administration of the examination determines the cheating detected has not yet compromised the integrity of the examination, such steps as are necessary to prevent further cheating shall be taken and the examinee may be permitted to continue with the examination.

(d) If cheating is detected after the examination, the division shall make appropriate inquiry to determine the facts concerning the cheating and shall thereafter take appropriate action.

(e) Upon determination that an applicant has cheated on an examination, the division may deny the applicant a license and may establish conditions the applicant must meet to qualify for a license including the earliest date on which the division will again consider the applicant for licensure.

(4) Notification.

The division shall notify all proctors, test administrators and examinees of the rules concerning cheating.

R156-1-305. Inactive Licensure.

(1) In accordance with Section 58-1-305, except as provided in Subsection (2), a licensee who holds an active in good standing license under Title 58 may apply for inactive licensure status.

(2) The following licenses issued under Title 58 may not be placed on inactive licensure status:

(a) Agency performing animal euthanasia;

(b) Analytical laboratory;

(c) Branch pharmacy;

(d) Certified professional accountant firm;

(e) Controlled substance;

(f) Controlled substance precursor distributors and purchasers;

(g) Cosmetologist/barber school;

(h) Employee leasing company;

(i) Funeral service establishment;

(j) Hospital, institutional, nuclear, out-of-state mail service and retail pharmacy;

(k) Licensed substance abuse counselor;

(l) Pharmaceutical manufacturer, researcher, teaching organization, wholesaler or distributor;

(m) Preneed funeral arrangement provider; and

(n) Veterinary pharmaceutical outlet.

(3) Applicants for inactive licensure shall apply to the division in writing upon forms available from the division. Each completed application shall contain documentation of requirements for inactive licensure, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

(4) If all requirements are met for inactive licensure, the division shall place the license on inactive status.

(5) A license may remain on inactive status indefinitely except as otherwise provided in Title 58 or rules which implement Title 58.

(6) An inactive license may be activated by requesting activation in writing upon forms available from the division. Unless otherwise provided in Title 58 or rules which implement Title 58, each reactivation application shall contain documentation that the applicant meets current renewal requirements, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

R156-1-308a. Renewal Dates.

(1) The following standard two-renewal cycle renewal dates are established by license classification in accordance with the Subsection 58-1-308(1):

TABLE

RENEWAL DATES

(1)	Acupuncturist	May 31	even years
(2)	Advanced Practice Registered Nurse	January 31	even years
(3)	Animal Euthanasia Agency	May 31	odd years
(4)	Alternate Dispute Resolution Provdr	September 30	even years
(5)	Analytical Laboratory	May 31	odd years
(6)	Architect	May 31	even years
(7)	Athlete Agent	September 30	even years
(8)	Audiologist	May 31	odd years
(9)	Branch Pharmacy	May 31	odd years
(10)	Building Inspector	July 31	odd years
(11)	Burglar Alarm Security	July 31	even years
(12)	C.P.A. Firm	September 30	even years
(13)	Certified Shorthand Reporter	May 31	even years
(14)	Certified Dietitian	September 30	even years
(15)	Certified Nurse Midwife	January 31	even years
(16)	Certified Public Accountant	September 30	even years
(17)	Certified Registered Nurse Anesthetist	January 31	even years
(18)	Certified Social Worker	September 30	even years
(19)	Chiropractic Physician	May 31	even years
(20)	Clinical Social Worker	September 30	even years
(21)	Construction Trades Instructor	July 31	odd years
(22)	Contractor	July 31	odd years
(23)	Controlled Substance Precursor Distributor	May 31	odd years
(24)	Controlled Substance Precursor Purchaser	May 31	odd years
(25)	Cosmetologist/Barber	September 30	odd years

(26)	Cosmetology/Barber School	September 30	odd years
(27)	Deception Detection	July 31	even years
(28)	Dental Hygienist	May 31	even years
(29)	Dentist	May 31	even years
(30)	Electrician Apprentice, Journeyman, Master, Residential Journeyman, Residential Master	July 31	even years
(31)	Electrologist	September 30	odd years
(32)	Electrology School	September 30	odd years
(33)	Environmental Health Scientist	May 31	odd years
(34)	Esthetician	September 30	odd years
(35)	Esthetics School	September 30	odd years
(36)	Factory Built Housing Dealer	September 30	even years
(37)	Funeral Service Director	May 31	even years
(38)	Funeral Service Establishment	May 31	even years
(39)	Genetic Counselor	September 30	even years
(40)	Health Care Assistant	November 30	even years
(41)	Health Facility Administrator	May 31	odd years
(42)	Hearing Instrument Specialist	September 30	even years
(43)	Hospital Pharmacy	May 31	odd years
(44)	Institutional Pharmacy	May 31	odd years
(45)	Landscape Architect	May 31	even years
(46)	Licensed Practical Nurse	January 31	even years
(47)	Licensed Substance Abuse Counselor	May 31	odd years
(48)	Marriage and Family Therapist	September 30	even years
(49)	Massage Apprentice, Therapist	May 31	odd years
(50)	Master Esthetician	September 30	odd years
(51)	Nail Technologist	September 30	odd years
(52)	Nail Technology School	September 30	odd years
(53)	Naturopath/Naturopathic Physician	May 31	even years
(54)	Nuclear Pharmacy	May 31	odd years
(55)	Occupational Therapist	May 31	odd years
(56)	Occupational Therapy Assistant	May 31	odd years
(57)	Optometrist	September 30	even years
(58)	Osteopathic Physician and Surgeon	May 31	even years
(59)	Out of State Mail Order Pharmacy	May 31	odd years
(60)	Pharmaceutical Administration Facility	May 31	odd years
(61)	Pharmaceutical Dog Trainer	May 31	odd years
(62)	Pharmaceutical Manufacturer	May 31	odd years
(63)	Pharmaceutical Researcher	May 31	odd years
(64)	Pharmaceutical Teaching Organization	May 31	odd years
(65)	Pharmaceutical Wholesaler/Distributor	May 31	odd years
(66)	Pharmacist	May 31	odd years
(67)	Pharmacy Technician	May 31	odd years
(68)	Physical Therapist	May 31	odd years
(69)	Physician Assistant	May 31	even years
(70)	Physician and Surgeon	January 31	even years
(71)	Plumber Apprentice, Journeyman, Residential Apprentice, Residential Journeyman	July 31	even years
(72)	Podiatric Physician	September 30	even years
(73)	Pre Need Funeral Arrangement Provider	May 31	even years
(74)	Pre Need Funeral Arrangement Sales Agent	May 31	even years
(75)	Private Probation Provider	May 31	odd years
(76)	Professional Counselor	September 30	even years
(77)	Professional Engineer	December 31	even years
(78)	Professional Land Surveyor	December 31	even years
(79)	Professional Structural Engineer	December 31	even years
(80)	Psychologist	September 30	even years
(81)	Radiology Practical Technician	May 31	odd years
(82)	Radiology Technologist	May 31	odd years
(83)	Recreational Therapy Technician, Specialist, Master Specialist	May 31	odd years
(84)	Registered Nurse	January 31	odd years
(85)	Respiratory Care Practitioner	September 30	even years
(86)	Retail Pharmacy	May 31	odd years
(87)	Security Personnel	July 31	even years
(88)	Social Service Worker	September 30	even years
(89)	Speech-Language Pathologist	May 31	odd years
(90)	Veterinarian	September 30	even years
(91)	Veterinary Pharmaceutical Outlet	May 31	odd years

(2) The following non-standard renewal terms and renewal or extension cycles are established by license classification in accordance with Subsection 58-1-308(1) and in accordance with specific requirements of the license:

(a) Certified Marriage and Family Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(b) Certified Professional Counselor Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(c) Funeral Service Apprentice licenses shall be issued for a two year term and may be extended for an additional two year term if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(d) Professional Employer Organization licenses expire every year on September 30.

(e) Psychology Resident licenses shall be issued for a two year term and may be extended if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

R156-1-308b. Renewal Periods - Adjustment of Renewal Fees for an Extended or Shortened Renewal Period.

(1) Except as otherwise provided by statute or as required to establish or reestablish a renewal period, each renewal period shall be for a period of two years.

(2) The renewal fee for a renewal period which is extended or shortened by more than one month to establish or reestablish a renewal period shall increased or decreased proportionately.

R156-1-308c. Renewal of Licensure Procedures.

The procedures for renewal of licensure shall be as follows:

(1) The division shall mail a renewal notice to each licensee at least 60 days prior to the expiration date shown on the licensee's license.

(2) Renewal notices shall be sent by letter deposited in the post office with postage prepaid, addressed to the last address shown on the division's automated license system. Such mailing shall constitute legal notice. It shall be the duty and

responsibility of each licensee to maintain a current address with the division.

(3) Renewal notices shall specify the renewal requirements and require that each licensee document or certify that the licensee meets the renewal requirements.

(4) Renewal notices shall specify a renewal application due date at least 30 days prior to the expiration date shown on the licensee's license in order to permit the renewal applications to be processed prior to the expiration of licensure in accordance with Subsection 58-1-308(4).

(5) Renewal notices shall advise each licensee that a license that is not renewed prior to the expiration date shown on the license automatically expires and that any continued practice without a license constitutes a criminal offense under Subsection 58-1-501(1)(a).

(6) Renewal notices shall further advise each licensee that if the licensee fails to return the renewal application to the division or its designee by the renewal application due date, the licensee's license may expire before it is renewed.

(7) Renewal notices shall specify the address or addresses to where the renewal applications should be submitted.

(8) When a renewal application contains multiple parts to be returned to separate addresses, the division shall facilitate proper submission by using, to the extent resources permit, color coded renewal applications with perforated sections and return envelopes.

(9) Licensees licensed during the last four months of a renewal cycle shall be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their license.

R156-1-308d. Denial of Renewal of Licensure - Classification of Proceedings - Conditional Renewal or Reinstatement During Pendency of Adjudicative Proceedings, Audit or Investigation.

(1) Denial of renewal of licensure shall be classified as a formal adjudicative proceeding under Rule R156-46b.

(2) When a renewal application is denied and the applicant concerned requests a hearing to challenge the division's action as permitted by Subsection 63-46b-3(3)(d)(ii), unless the requested hearing is convened and a final order is issued prior to the expiration date shown on the applicant's current license, the division shall conditionally renew the applicant's license during the pendency of the adjudicative proceeding as permitted by Subsection 58-1-106(8).

(3)(a) When a renewal applicant or a reinstatement applicant under Subsections 58-1-308(5) or (6)(b) is selected for audit or is under investigation, the division may conditionally renew or reinstate the applicant pending the completion of the audit or investigation.

(b) The undetermined completion of a referenced audit or investigation rather than the established expiration date shall be indicated as the expiration date of a conditionally renewed or reinstated license.

(c) A conditional renewal or reinstatement shall not constitute an adverse licensure action.

(d) Upon completion of the audit or investigation, the division shall notify the renewal or reinstatement applicant whether the applicant's license is unconditionally renewed, reinstated, denied, or partially denied or reinstated.

(e) A notice of unconditional denial or partial denial of licensure to a licensee who the division determines may be conditionally renewed or reinstated shall include the following:

(i) that the licensee's unconditional renewal or reinstatement of licensure is denied or partially denied and the basis for such action;

(ii) the division's file or other reference number of the audit or investigation;

(iii) that the denial or partial denial of unconditional renewal or reinstatement of licensure is subject to review and a description of how and when such review may be requested;

(iv) that the licensee's license automatically will or did expire on the expiration date shown on the license, and that the license will not be renewed or reinstated unless or until the applicant timely requests review; and

(v) that if the licensee timely requests review, the licensee's conditionally renewed or reinstated license does not expire until an order is issued unconditionally renewing, reinstating, denying, or partially denying the renewal or reinstatement of the licensee's license.

R156-1-308e. Reinstatement of Licensure which was Active and in Good Standing at the Time of Expiration of Licensure - Requirements.

The following requirements shall apply to reinstatement of licensure which was active and in good standing at the time of expiration of licensure:

(1) In accordance with Subsection 58-1-308(5), if an application for reinstatement is received by the division between the date of the expiration of the license and 31 days after the date of the expiration of the license, the applicant shall:

(a) submit a completed renewal form as furnished by the division demonstrating compliance with requirements and/or conditions of license renewal; and

(b) pay the established license renewal fee and a late fee.

(2) In accordance with Subsection 58-1-308(5), if an application for reinstatement is received by the division between 31 days after the expiration of the license and two years after the date of the expiration of the license, the applicant shall:

(a) submit a completed renewal form as furnished by the division demonstrating compliance with requirements and/or conditions of license renewal; and

(b) pay the established license renewal fee and reinstatement fee.

(3) In accordance with Subsection 58-1-308(6)(a), if an application for reinstatement is received by the division more than two years after the date the license expired and the applicant has not been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States during the time the license was expired, the applicant shall:

(a) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;

(b) provide information requested by the division and

board to clearly demonstrate the applicant is currently competent to engage in the occupation or profession for which reinstatement of licensure is requested;

(c) if the applicant has not been engaged in unauthorized practice of the applicant's occupation or profession following the expiration of the applicant's license, pay the established license fee for a new applicant for licensure and the reinstatement fee; and

(d) if the applicant has been engaged in unauthorized practice of the applicant's occupation or profession following the expiration of the applicant's license, pay the current license renewal fee multiplied by the number of renewal periods for which the license renewal fee has not been paid since the time of expiration of license, plus a reinstatement fee.

(4) In accordance with Subsection 58-1-308(6)(b), if an application for reinstatement is received by the division more than two years after the date the license expired but the applicant has been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States shall:

(a) submit documentation of prior licensure in the State of Utah;

(b) submit documentation that the applicant has been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States;

(c) provide documentation that the applicant has completed or is in compliance with any renewal qualifications;

(d) provide information requested by the division and board to clearly demonstrate the applicant is currently competent to engage in the occupation or profession for which reinstatement of licensure is requested;

(e) pass a law and rules examination if such an examination has been adopted for the occupation or profession to which the application pertains; and

(f) pay the established license renewal fee and the reinstatement fee.

R156-1-308f. Reinstatement of Restricted, Suspended, or Probationary Licensure During Term of Restriction, Suspension, or Probation - Requirements.

(1) Reinstatement of restricted, suspended, or probationary licensure during the term of limitation, suspension, or probation shall be in accordance with the disciplinary order which imposed the discipline.

(2) Unless otherwise specified in a disciplinary order imposing restriction, suspension, or probation of licensure, the disciplined licensee may, at reasonable intervals during the term of the disciplinary order, petition for reinstatement of licensure.

(3) Petitions for reinstatement of licensure during the term of a disciplinary order imposing restriction, suspension, or probation, shall be treated as a request to modify the terms of the disciplinary order, not as an application for licensure.

R156-1-308g. Reinstatement of Restricted, Suspended, or Probationary Licensure After the Specified Term of Suspension of the License or After the Expiration of Licensure in a Restricted or Probationary Status - Requirements.

Unless otherwise provided by a disciplinary order, an applicant who applies for reinstatement of a license after the specified term of suspension of the license or after the expiration of the license in a restricted or probationary status shall:

(1) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and conditions of license reinstatement;

(2) pay the established license renewal fee and the reinstatement fee; and

(3) provide information requested by the division and board to clearly demonstrate the applicant is currently competent to be reinstated to engage in the occupation or profession for which the applicant was suspended, restricted, or placed on probation.

R156-1-308h. Relicensure Following Revocation of Licensure - Requirements.

An applicant for relicensure following revocation of licensure shall:

(1) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;

(2) pay the established license fee for a new applicant for licensure; and

(3) provide information requested by the division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was revoked.

R156-1-308i. Relicensure Following Surrender of Licensure - Requirements.

The following requirements shall apply to relicensure applications following the surrender of licensure:

(1) An applicant who surrendered a license that was active and in good standing at the time it was surrendered shall meet the requirements for licensure listed in Section R156-1-308.

(2) An applicant who surrendered a license while the license was active but not in good standing as evidenced by the written agreement supporting the surrender of license shall:

(a) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;

(b) pay the established license fee for a new applicant for licensure; and

(c) provide information requested by the division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was surrendered.

R156-1-404a. Diversion Advisory Committees Created -

Impaneling of Committees - Appointment of Members - Terms of Office - Vacancies in Office - Removal of Members - Quorum Requirement - Appointment of Chairman - Division to Provide Secretary - Compliance with Open and Public Meetings Act - Compliance with Utah Administrative Procedures Act - No Provision for Per Diem and Expenses.

(1) There is created diversion advisory committees of three members for each of the occupations or professions regulated under Title 58. The diversion committees are not required to be impaneled by the director until the need for the diversion committee arises.

(2) The term of office of each diversion committee member shall be for a period of three years; except that initial appointments to each diversion committee after adoption of these rules shall be staggered in that one appointment shall be one year, one appointment shall be for two years and one shall be for three years. Diversion committee members shall not be appointed to serve for more than two consecutive terms.

(3) No diversion committee member may serve more than two full terms, and no member who ceases to serve may again serve on the diversion committee until after the expiration of two years from the date of cessation of service.

(4) If a vacancy on a diversion committee occurs, the director shall appoint a replacement to fill the unexpired term in accordance with Section 58-1-404. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(5) The director may remove a member for reasonable cause with the concurrence of the executive director. Reasonable cause includes failing or refusing to fulfill the responsibilities and duties of an advisory committee member, including the attendance at diversion committee meetings. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(6) A chairman of each diversion committee shall be designated by the director from among the three members appointed to the diversion committee. That person shall be responsible for managing the work of the diversion committee in consultation with the director.

(7) Committees meetings shall only be convened following the referral of a licensee to the diversion committee.

(8) Unless otherwise approved by the division, diversion committee meetings shall be held in the building occupied by the division.

(9) A majority of the diversion committee members shall constitute a quorum and may act in behalf of the diversion committee.

(10) Diversion committees shall comply with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, in their adjudicative proceedings, if any.

(11) Diversion committee members shall perform their duties and responsibilities as public service and shall not receive a per diem allowance, or traveling or accommodations expenses incurred in diversion committees business, except as otherwise provided in Title 58 or Title R156.

R156-1-404b. Diversion Committees Duties.

The duties of diversion committees shall include:

(1) reviewing the details of the charges against licensees referred to the diversion committee for possible diversion, interviewing the licensees, and recommending to the director whether the licensees meet the qualifications for diversion and if so whether the licensees should be considered for diversion;

(2) recommending to the director terms and conditions to be included in diversion agreements;

(3) supervising compliance with all terms and conditions of diversion agreements;

(4) advising the director at the conclusion of a licensee's diversion program whether the licensee has completed the terms of the licensee's diversion agreement; and

(5) establishing and maintaining continuing quality review of the programs of professional associations and/or private organizations to which licensees approved for diversion may enroll for the purpose of education, rehabilitation or any other purpose agreed to in the terms of a diversion agreement.

R156-1-404c. Diversion - Eligible Offenses.

In accordance with Subsection 58-1-404(4), the unprofessional conduct which may be subject to diversion is set forth in Subsections 58-1-501(2)(e) and (f).

R156-1-404d. Diversion - Procedures.

(1) Diversion committees shall complete the duties described in Subsections R156-1-404b(1) and (2) no later than 60 days following the referral of a licensee to the diversion committee for possible diversion.

(2) The director shall accept or reject the diversion committee's recommendation no later than 30 days following receipt of the recommendation.

(3) If the director finds that a licensee meets the qualifications for diversion and should be diverted, the division shall prepare and serve upon the licensee a proposed diversion agreement. The licensee shall have a period of time determined by the diversion committee not to exceed 30 days from the service of the proposed diversion agreement to negotiate a final diversion agreement with the director. The final diversion agreement shall comply with Subsections 58-1-404(6) through (7).

(4) If a final diversion agreement is not reached with the director within 30 days from service of the proposed diversion agreement, the division shall pursue appropriate disciplinary action against the licensee in accordance with Section 58-1-108.

(5) The legal consequences of diversion are as described in Subsections 58-1-404(8) through (10).

(6) Reporting or release of information shall be in compliance with Subsection 58-1-404(9).

(7) In accordance with Subsection 58-1-404(5), a licensee may be represented, at the licensee's discretion and expense, by legal counsel during negotiations for diversion, at the time of execution of the diversion agreement and at any hearing before the director relating to a diversion program.

R156-1-404e. Diversion - Agreements for Rehabilitation, Education or Other Similar Services or Coordination of Services.

(1) The division may enter into agreements with professional or occupational organizations or associations,

education institutions or organizations, testing agencies, health care facilities, health care practitioners, government agencies or other persons or organizations for the purpose of providing rehabilitation, education or any other services necessary to facilitate an effective completion of a diversion program for a licensee.

(2) The division may enter into agreements with impaired person programs to coordinate efforts in rehabilitating and educating impaired professionals.

(3) Agreements shall be in writing and shall set forth terms and conditions necessary to permit each party to properly fulfill its duties and obligations thereunder. Agreements shall address the circumstances and conditions under which information concerning the impaired licensee will be shared with the division.

(4) The cost of administering agreements and providing the services thereunder shall be borne by the licensee benefiting from the services. Fees paid by the licensee shall be reasonable and shall be in proportion to the value of the service provided. Payments of fees shall be a condition of completing the program of diversion.

(5) In selecting parties with whom the division shall enter agreements under this section, the division shall ensure the parties are competent to provide the required services. The division may limit the number of parties providing a particular service within the limits or demands for the service to permit the responsible diversion committee to conduct quality review of the programs given the committee's limited resources.

R156-1-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct;

(2) practicing a regulated occupation or profession in, through, or with a limited liability company which has omitted the words "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company;

(3) practicing a regulated occupation or profession in, through, or with a limited partnership which has omitted the words "limited partnership," "limited," or the abbreviation "L.P." or "Ltd." in the commercial use of the name of the limited partnership; or

(4) practicing a regulated occupation or profession in, through, or with a professional corporation which has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation.

R156-1-503. Reporting Disciplinary Action.

The division may report disciplinary action to other state or federal governmental entities, state and federal data banks, the media, or any other person who is entitled to such information under the Government Records Access and Management Act.

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R156. Commerce, Occupational and Professional Licensing.
R156-9. Funeral Service Licensing Act Rules.
R156-9-101. Short title.

These rules shall be known as the "Funeral Service Licensing Act Rules".

R156-9-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 9, as defined or used in these rules:

(1) "Qualified continuing professional education" as used in these rules means continuing professional education that meets the standards set forth in Section R156-9-304.

(2) "Supervision of a funeral service apprentice" means that a licensed funeral service director shall be available at all times for consultation, direction and instruction. The funeral service director shall be present and directly supervise the apprentice during the first 50 embalmings. After the first 50 embalmings, the funeral service director shall be available in the facility for consultation, direction and instruction. All embalming performed by the apprentice shall be recorded and reported to the division on forms supplied by the division at the time of application for licensure as a funeral service director.

(3) "Supervision of staff" including apprentices means that the funeral service director is responsible for the funeral service activities, duties and functions performed by the staff.

(4) "Supervising sales of preneed funeral plans or contracting with or employing individuals to sell preneed funeral plans" means that a licensed funeral service establishment shall make application with the division to sell preneed funeral plans and be responsible for and sign all contracts written by staff, employees or subordinates who are hired or contracted with to sell preneed; and to insure that all individuals selling preneed funeral plans are licensed by the division as seller agents.

(5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 9, is further defined in accordance with Subsection 58-1-203 (5) to include the following acts when committed by an applicant for funeral service director or a licensed funeral service director or licensed funeral service apprentice:

(a) violates the ethical standards of the profession;

(b) fails to comply with the standards set forth under the Preneed Funeral Arrangement Act and Administrative Rules;.

(c) fails to comply with the local, state, or federal health, safety and sanitation codes;.

(d) fails to comply with the requirements for CPE;

(e) fails to comply with the Funeral Service Licensing Act or the Funeral Service Licensing Act Rules;

(f) fails to comply with the disclosure requirements of the Federal Trade Commission;

(g) fails to accurately report and record information required by law to be reported on a death certificate;.

(h) solicitation or the direct or indirect offer to pay a commission for the procurement of dead human bodies by the licensee or his apprentices, staff, agents or employees; or

(i) fails to comply with the Utah Vital Statistics Rules as promulgated by the Utah Department of Health.

R156-9-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106 (1) to enable the division to administer Title 58, Chapter 9.

R156-9-104. Organization - Relationship to Rule R156-1.

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

R156-9-302a. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203 (7) and 58-1-301 (3), the qualifications for licensure in Section 58-9-6 are defined, clarified, or established as follows:

(1) An applicant for licensure as a funeral service director shall be required to pass the funeral service examination of the Conference of Funeral Service Examining Board, except as provided in Sections R156-9-302c and R156-9-302d. The examination may be taken while the individual is enrolled in an approved funeral service school.

(2) All applicants for licensure including out of state applicants and apprentices shall be required to pass the Utah law and rules and ethics examination with a passing score of 70%.

R156-9-302b. Qualifications for Licensure - Education Requirements.

In accordance with Subsections 58-1-203 (7) and 58-1-301 (3), the qualifications for licensure in Section 58-9-6 (1) (e) are defined, clarified, or established as follows:

(1) Before April 30, 1991, an applicant for licensure shall complete 12 months or equivalent of academic instruction in a prescribed course at a school of funeral service accredited by the American Board of Funeral Service Education and complete an additional 12 months or equivalent of academic instruction from a school approved by the board.

(2) After April 30, 1991, an applicant for licensure shall obtain a two year associates degree in mortuary science from a school of funeral service accredited by the American Board of Funeral Service Education or other accrediting body recognized by the U.S. Department of Education, except that a person who was enrolled in funeral service school prior to April 30, 1991 may be permitted to be licensed by completing the educational requirements established prior to the enactment of the April 1991 law as set forth in Subsection (1) above.

R156-9-302c. Qualifications for Licensure - Reinstatement.

An individual whose license as a funeral service director in Utah expires and is not renewed within two years after the date of expiration shall reinstate his license in accordance with one of the following:

(1) If the license was issued prior to April 30, 1991 and the individual practiced as a funeral service director the equivalent of full-time for ten out of the past 15 years immediately preceding the expiration date of the license, such practice shall be considered to be the equivalent of the education, apprenticeship and examination requirements established in Section 58-9-6. The individual, in order to reinstate his license, shall complete the following:

(a) complete 20 hours of continuing professional education approved by the board prior to the reinstatement of

the funeral service director license;

(b) pass the current Utah law and rules examination for funeral service director; and

(c) make application and pay the required fees.

(2) If the license was issued after April 30, 1991 or the individual did not have the equivalent qualifying experience as set forth in Subsection (1) above, the individual shall reinstate his license in accordance with the following:

(a) complete 20 hours of continuing professional education approved by the board prior to the reinstatement of the funeral service director license;

(b) pass the current Utah law and rules examination for funeral service director;

(c) meet the requirements for a new license which requires passing the funeral service examination of the Conference of Funeral Service Examining Board and completing a two year associates degree in mortuary science from a school of funeral service accredited by the American Board of Funeral Service Education. A person who has been licensed in Utah as a funeral service director shall not be required to document or complete a new apprenticeship.

R156-9-302d. Qualifications for Licensure - Endorsement.

In accordance with Subsections 58-1-203 (7) and 58-301 (3) and Section 58-1-302, the qualifications for licensure in Section 58-9-6 are defined, clarified, or established as follows:

(1) A person who is currently licensed or permitted to embalm dead human bodies in any state or territory of the United States and was engaged in the full-time practice of embalming for ten out of the past 15 years immediately preceding the date of the application may be considered to have the equivalent education, apprenticeship and examination requirements established under Section 58-9-6 and may be licensed as a funeral service director in this state without the necessity of documenting or completing the current education, examination, and apprenticeship requirements, upon completing the following:

(a) submit a verification of licensure from the state the application was licensed and practicing in;

(b) pass the current Utah law and rules examination for funeral service director;

(c) complete 20 hours of continuing professional education approved by the board prior to the issuance of the funeral service director license; and

(d) make application and pay the required fees.

(2) All other persons who are applying for licensure as a funeral service director who are currently licensed in another state or territory of the United States shall qualify for licensure as provided in Title 58, Chapter 9 and these rules.

R156-9-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308 (1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 9 is established by rule in Section R156-1-308.

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

R156-9-304. Continuing Professional Education.

(1) In accordance with Subsections 58-1-203 (7) and 58-1-308 (3) (b) and Section 58-9-8, there is created a continuing professional education requirement as a condition for renewal or reinstatement of licenses issued under Title 58, Chapter 9.

(2) Continuing professional education shall consist of 20 hours of qualified continuing professional education in each preceding two-year period of licensure or expiration of licensure.

(3) If a renewal period is shortened or extended to effect a change of renewal cycle, the continuing professional education hours required for that renewal period shall be increased or decreased accordingly as a pro rata amount of the requirements of a two-year period.

(4) The standards for qualified continuing professional education are:

(a) College classes, seminars, workshops in areas related to funeral service will generally qualify for continuing professional education (CPE) if the education contributes to the professional competence and knowledge of the funeral service director and if the program complies with the standards set forth under Subsection (b).

(b) CPE programs shall meet the following requirements:

(i) the course shall be formally organized and be primarily instructional;

(ii) the sponsor shall prepare an outline of the course which shall be retained for a minimum of four years following the presentation;

(iii) the sponsor shall list the hour rating of the course in the course outline. One hour of CPE shall be credited for each 50 minute period of instruction;

(iv) the sponsor shall record and keep an accurate record of course attendance including the date, place, and the name of the licensed funeral service directors attending the course; and

(v) the sponsor shall issue a certificate of completion listing the time, date, place, name of licensee, number of hours of CPE completed and the course title.

(c) Self directed studies may qualify for CPE if the studies can be documented by a certificate of completion.

(d) Each semester hour of college credit shall equal 15 hours of CPE. A quarter hour shall equal ten hours of CPE.

(e) Individuals who become licensed between renewal periods shall be required to complete CPE based upon 2.5 hours per calendar quarter for the remainder of the reporting period.

(5) Upon written request from the licensee, the board may waive the requirement for CPE for a period of up to three years on the basis that the licensee will be engaged in activities or be subject to circumstances which prevent the licensee from meeting the requirements.

(6) The licensee is responsible to insure that the program will qualify for CPE. Each licensee shall keep an accurate record of CPE on forms supplied by the division. The records shall be maintained for a minimum of four years.

(7) The division in collaboration with the board shall perform random audits to determine if the licensee is in compliance with the CPE requirements. If audited, or upon request by the division, the licensee is responsible to submit documentation of course completions. The licensee shall be required to complete any deficiencies within a period of time specified by the board.

R156-9-401. Facility/Staff Requirements.

(1) The funeral service establishment is responsible for the maintenance and safe operation of equipment used in funeral services and to insure that the facility is in compliance with the local or state health, fire and life safety codes. All mortuaries shall be kept and maintained in a clean and sanitary condition and all embalming tables, sinks, receptacles, instruments and other appliances used in embalming and cremation of dead human bodies shall be thoroughly cleansed and disinfected.

(2) The funeral service director is responsible to comply with the standards established by the Occupational Safety and Health Administration for the Federal Government and for the State of Utah.

(3) A funeral establishment or a number of funeral establishments under one management shall contain:

(a) a preparation room equipped with tile, cement, or composition floor, necessary drainage and ventilation. Every preparation room shall be provided with proper and convenient receptacles for refuse, bandages, cotton and other waste materials and supplies. All refuse, bandages, cotton, and other waste materials shall be destroyed in a sanitary manner, in accordance with health regulations.

(b) necessary instruments, supplies and proper protective clothing for the preparation and embalming of dead human bodies for burial, transportation, or other disposition.

(4) The care and preparation of the body for burial or other disposition of all human dead bodies shall be strictly private. No one shall be allowed in the embalming room while a dead body is being embalmed, except the licensed embalmer, apprentice, staff, public officials in the discharge of their duties and upon request, members of the immediate family of the deceased.

R156-9-501. Disclosure Information.

(1) Funeral service directors are responsible to comply with the Federal Trade Commission laws and rules. Specific rules include:

(a) provide consumers with a written, itemized general price list, casket price list and outer burial container price list;

(b) make truthful representations regarding legal and other requirements concerning funeral arrangements;

(c) permit consumers to select and purchase only those goods and services they desire;

(d) obtain express permission before performing embalming;

(e) refrain from misrepresenting the preservative and protective value of funeral goods and services; and

(f) provide price information over the telephone.

R156-9-601. Death Registration - Removal of Body - Transportation and Preservation of Dead Human Bodies.

(1) A funeral service director licensed in another state may enter the state of Utah for the purpose of transporting a dead human body back to the originating state without being in violation of Title 58, Chapter 9. However, the person shall comply with the Utah Vital Statistics Rules of the Utah Department of Health.

(2) All licensed funeral service directors are responsible to insure that they or their staff comply with the Utah Vital Statistics Rules of the Utah Department of Health.

KEY: funeral industries, licensing

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R156. Commerce, Occupational and Professional Licensing.
R156-15. Health Facility Administrator Act Rules.
R156-15-101. Title.

These rules are known as the "Health Facility Administrator Act Rules".

R156-15-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 15, as used in Title 58, Chapters 1 and 15 or these rules:

(1) "Administrator in training (AIT)" means an individual who is participating in a preceptorship with a licensed health facility administrator.

(2) "Board" means the Health Care Administrators Board.

(3) "General administration" as used in the definition of "administrator", Subsection 58-15-2(1), means that the administrator is responsible for operation of the health facility in accordance with all applicable laws regardless of whether the administrator is present full or part time in the facility or whether the administrator maintains an office inside or outside of the facility.

(4) "General supervision" means that the supervising health facility administrator is usually and regularly present within the health care facility and when not present is available for consultation by direct voice communication with the person being supervised.

(5) "Nursing home administrator" means a health facility administrator.

(6) "Preceptor" means a licensed health facility administrator who is responsible for the supervision and training of an AIT.

(7) "Preceptorship" means a formal training program approved by the division in collaboration with the board for an administrator in training (AIT), under the supervision of an approved licensed health facility administrator. The program is conducted in a licensed health facility.

(8) "Qualifying experience" includes 8,000 hours of employment in a health facility of which at least 4,000 hours are in a supervisory role, which includes being designated in writing to have administrative responsibility when the administrator is away.

R156-15-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 15.

R156-15-104. Organization - Relationship to Rule R156-1.

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

R156-15-302a. Qualifications for Licensure - Application Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the application requirements for licensure in Section 58-15-4 are defined, clarified, or established as follows:

(1) Complete an approved AIT preceptorship consisting of a minimum of 1,000 hours.

(2) Meet either the education requirement in Section R156-15-302b or the experience requirement in Section R156-15-302c.

R156-15-302b. Qualifications for Licensure - Education Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the education requirement for licensure in Subsection 58-15-4(2) is defined, clarified, or established as follows:

(1) Graduation from an accredited university or college with a minimum of a baccalaureate degree.

R156-15-302c. Qualifications for Licensure - Experience Requirements.

In accordance with Subsection 58-1-203(2) and 58-1-301(3), the experience requirement for licensure in Subsection 58-15-4(2) is defined, clarified, or established as follows:

(1) Completion of at least 8,000 hours of qualifying experience approved by the division in collaboration with the board.

R156-15-302d. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the examination requirement for licensure in Subsection 58-15-4(4) is defined, clarified, or established as follows:

(1) The National Association of Boards of Examiners for Nursing Home Administrators (NAB) examination is the qualifying examination required for licensure as a health facility administrator.

(a) The passing score on the NAB examination shall be a minimum scale score of 113.

R156-15-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 15 is established by rule in Section R156-1-308.

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

R156-15-307. AIT Preceptorship.

(1) The clinical hours spent in an internship, practicum, or outside study program associated with a bachelor's degree in health facility administration or health care administration may count toward the required hours of the approved AIT preceptorship.

(2) The preceptor shall be allowed to supervise not more than two AIT preceptees at a time.

(3) In order to be approved as a preceptor, the health facility administrator must have been licensed for three years and be currently working in a licensed health facility.

(4) The AIT preceptee shall at all times be under the general supervision of the preceptor.

(5) The AIT preceptee may work in the facility either full or part time while completing the preceptorship requirements. Credit received for AIT preceptorship training shall be earned only for duties related to AIT preceptorship training as set forth under Subsection (6).

(6) An approved AIT preceptorship shall include the following:

(a) Patient Care
(i) health maintenance
(ii) social and psychological needs
(iii) food service program
(iv) medical care
(v) recreational and therapeutic recreational activities
(vi) medical records
(vii) pharmaceutical program
(viii) rehabilitation program
(b) Personnel Management
(i) grievance procedures
(ii) performance evaluation system
(iii) job descriptions/performance standards
(iv) interview and hiring procedures
(v) training program
(vi) personnel policies and procedures
(vii) employee health and safety program
(c) Financial Management
(i) developing a budget
(ii) financial planning
(iii) cash management system
(iv) establishing accurate financial records
(d) Marketing and Public Relations
(i) planning and implementing a public relations program
(ii) planning and implementing an effective marketing program
(e) Physical Resource Management
(i) ground and building maintenance
(ii) sanitation and housekeeping procedures
(iii) compliance with fire life safety codes
(iv) security
(v) fire and disaster plan
(f) Laws and Regulatory Codes
(i) knowledge of medicaid and medicare
(ii) labor laws
(iii) knowledge of building, fire and life safety codes
(iv) OSHA/UOSHA
(v) Bureau of Health Facility Licensure Law and Rules
(vi) licensing and certification/professional licensing boards
(vii) health facility administrator law and rules
(viii) tax laws
(ix) establishing or working with a governing board.

R156-15-308. License By Endorsement.

A license may be granted to an applicant who is currently a licensed health facility administrator in good standing in another state in accordance with Section 58-1-302.

R156-15-309. Continuing Education.

(1) There is hereby established a continuing professional education requirement for all individuals licensed under Title 58, Chapter 15.

(2) During each two year period commencing on June 1 of each odd numbered year, a licensee shall be required to complete not less than 40 hours of qualified professional education directly related to the licensee's professional practice.

(3) The required number of hours of professional education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.

(4) Qualified professional education under this section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a health facility administrator;

(b) be relevant to the licensee's professional practice;

(c) be presented in a competent, well organized, and sequential manner consistent with the stated purpose and objective of the program;

(d) be prepared and presented by individuals who are qualified by education, training and experience; and

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

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

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

KEY: licensing, health facility administrators*
May 15, 1998 **58-1-106(1)**
Notice of Continuation February 7, 2002 **58-1-202(1)**
58-15-3(3)

R156. Commerce, Occupational and Professional Licensing.
R156-67. Utah Medical Practice Act Rules.
R156-67-101. Title.

These rules shall be known as the "Utah Medical Practice Act Rules".

R156-67-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 67, as used in Title 58, Chapters 1 and 67 or these rules:

(1) "ACCME" means the Accreditation Council for Continuing Medical Education.

(2) "Alternate medical practices", as used in Section R156-67-603, means treatment or therapy which is determined in an adjudicative proceeding conducted in accordance with Title 63, Chapter 46b, Administrative Procedures Act, to be:

(a) not generally recognized as standard in the practice of medicine;

(b) not shown by current generally accepted medical evidence to present a greater risk to the health, safety, or welfare of the patient than does prevailing treatment considered to be the standard in the profession of medicine; and

(c) supported by a body of current generally accepted written documentation demonstrating the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given.

(3) "AMA" means the American Medical Association.

(4) "FLEX" means the Federation of State Medical Boards Licensing Examination.

(5) "FMGEMS" means the Foreign Medical Graduate Examination in Medical Science.

(6) "FSMB" means the Federation of State Medical Boards.

(7) "Homeopathic medicine" means a system of medicine employing and limited to substances prepared and prescribed in accordance with the principles of homeopathic pharmacology as described in the Homeopathic Pharmacopoeia of the United States, its compendia, addenda, and supplements, as officially recognized by the federal Food, Drug and Cosmetic Act, Public Law 717.21 U.S. Code Sec. 331 et seq., as well as the state of Utah's food and drug laws and Controlled Substances Act.

(8) "LMCC" means the Licentiate of the Medical Council of Canada.

(9) "NBME" means the National Board of Medical Examiners.

(10) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 67 is further defined in accordance with Subsection 58-1-203(5), in Section R156-67-502.

(11) "USMLE" means the United States Medical Licensing Examination.

R156-67-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 67.

R156-67-104. Organization - Relationship to Rule R156-1.

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

R156-67-302a. Qualifications for Licensure - Practitioner Data Banks.

In accordance with Subsections 58-67-302(1)(a)(i) and 58-1-401(2), applicants applying for licensure under Subsections 58-67-302(1) and (2) shall submit the Federation Credentials Verification Service (FCVS) form.

R156-67-302d. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-67-302(1)(g), the required licensing examination sequence is the following:

(a) the FLEX components I and II on which the applicant shall have achieved a score of not less than 75 on each component part; or

(b) the NBME examination parts I, II, and III on which the applicant shall achieve a passing score of not less than 75 on each part; or

(c) the USMLE, steps 1, 2 and 3 on which the applicant shall achieve a score of not less than 75 on each step; or

(d) the LMCC examination, Parts 1 and 2; or

(e) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the NBME part II or the USMLE step 3; or

(f) the FLEX component 1 and the USMLE step 3; or

(g) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the FLEX component 2.

(h) In addition all applicants who are foreign medical graduates shall pass the FMGEMS unless they pass the USMLE steps 1 and 2.

(2) In accordance with Subsection 58-67-302(2)(d), an applicant under the following circumstances may be required to take the SPEX examination to document his qualification for licensure:

(a) has not practiced in the past three years;

(b) has had disciplinary action in the past;

(c) has a physical or mental impairment which may affect his ability to safely practice; or

(d) has had a history of substance abuse.

(3) In accordance with Subsection (2) above, the passing score on the SPEX examination is 75.

R156-67-302e. Qualifications for Licensure - Requirements for Admission to the Examinations.

(1) Admission to the USMLE steps 1 and 2 shall be in accordance with policies and procedures of the FSMB and the NBME.

(2) Requirements for admission to the USMLE step 3 are:

(a) completion of the education requirements as set forth in Subsections 58-67-302(1)(d) and (e);

(b) passing scores on USMLE steps 1 and 2, or the FLEX component 1, or the NBME parts I and II;

(c) have passed the first USMLE step taken, either 1 or 2, within seven years if enrolled in a medical doctorate program and ten years if enrolled in a medical doctorate/doctorate of philosophy program; and

(d) have not failed a combination of USMLE step 3, FLEX component 2 and NBME part III, three times.

(3) Candidates who fail a combination of USMLE step 3, FLEX component 2 and NBME part III three times must

successfully complete additional education as required by the board before being allowed to sit for USMLE step 3.

R156-67-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 67 is established by rule in Section R156-1-308.

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

R156-67-304. Qualified Continuing Professional Education.

(1) The qualified continuing professional education set forth in Subsection 58-67-304(1) shall consist of 40 hours in category 1 offerings as established by the ACCME in each preceding two year licensure cycle.

(2) The standard for qualified continuing professional education is that it consist of offerings or courses approved by institutions accredited by the ACCME to approve continuing medical education.

(3) A licensee must be able to document completion of the continuing professional education upon the request of the Division. Such documentation should be retained until the next renewal cycle. Documentation of completed qualified continuing professional education shall consist of any of the following:

(a) certificates from sponsoring agencies;

(b) transcripts of participation on applicable institutions letterhead; and

(c) "CME Self-Reporting Log".

(4) Participation in an ACGME approved residency program shall be considered to meet the continuing education requirement in a pro-rata amount equal to any part of that two year period.

R156-67-306. Exemptions from Licensure.

In accordance with Subsection 58-1-307(1), exemptions from licensure as a physician and surgeon include the following:

(1) any physician excepted from licensure, who engages in prescribing, dispensing, or administering a controlled substance outside of a hospital, shall be required to apply for and obtain a Utah Controlled Substance License as a condition precedent to them administering, dispensing or prescribing a controlled substance;

(2) any physician appointed to a graduate medical education or training program which is not accredited by the ACGME, for which exception from licensure is requested under the provisions of Subsection 58-1-307(1)(c) shall apply for registration with and receive approval of the division and board as a condition precedent to that individual engaging in any activity included in the practice of medicine;

(3) any person engaged in a competent public screening program making measures of physiologic conditions including serum cholesterol, blood sugar and blood pressure, shall be exempt from licensure and shall not be considered to be engaged in the practice of medicine conditioned upon compliance with all of the following:

(a) all instruments or devices used in making measures are approved by the Food and Drug Administration of the U.S. Department of Health, to the extent an approval is required, and the instruments and devices are used in accordance with those approvals;

(b) the facilities and testing protocol meet any standards or personnel training requirements of the Utah Department of Health;

(c) unlicensed personnel shall not interpret results of measures or tests nor shall they make any recommendation with respect to treatment or the purchase of any product;

(d) licensed personnel shall act within the lawful scope of practice of their license classification;

(e) unlicensed personnel shall conform to the referral and follow-up protocol approved by the Utah Department of Health for each measure or test; and

(f) information provided to those persons measured or tested for the purpose of permitting them to interpret their own test results shall be only that approved by the Utah Department of Health;

(4) non-licensed public safety individuals not having emergency medical technician (EMT) certification who are designated by appropriate city, county, or state officials as responders may be issued and allowed to carry the Mark I automatic injector antidote kits and may administer the antidote to himself or his designated first response "buddy". Prior to being issued the kits, the designated responders must successfully complete a course on the use of auto-injectors. The kits may be issued to the responder only by his employing agency and procured through the Utah Department of Health.

R156-67-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) prescribing for oneself any Schedule II or III controlled substance; however, nothing in these rules shall be interpreted by the division or the board to prevent a licensee from using, possessing or administering to himself a Schedule II or III controlled substance which was legally prescribed for him by a licensed practitioner acting within his scope of licensure when it is used in accordance with the prescription order and for the use for which it was intended;

(2) knowingly prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(14) unless permitted by law and when it is prescribed, dispensed or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate;

(3) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered;

(4) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them;

(5) knowingly failing to transfer a copy of pertinent and

necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative;

(6) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by physicians licensed under the Medical Practice Act;

(7) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed physician and surgeon who is equally qualified to provide that care;

(8) billing a global fee for a procedure without providing the requisite care;

(9) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Board of Radiology. However, nothing in this subsection shall be interpreted to prevent a licensed physician and surgeon from reviewing the results of any breast screening by diagnostic mammography procedure upon a patient for the purpose of considering those results in determining appropriate care and treatment of that patient if the results are interpreted by a physician and surgeon qualified under this subsection and a timely written report is prepared by the interpreting physician and surgeon in accordance with the standards and ethics of the profession;

(10) failing of a licensee under Title 58, Chapter 67, without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as a medical doctor;

(11) failing of a licensee under Title 58, Chapter 67, without just cause to comply with the terms of any written agreement in which the licensee's education or training as a medical doctor is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure;

(12) a physician providing services to a department of health by participating in a system under which the physician provides the department with completed and signed prescriptions without the name and address of the patient, or date the prescription is provided to the patient when the prescription form is to be completed by authorized registered nurses employed by the department of health which services are not in accordance with the provisions of Section 58-17a-620;

(13) failing to keep the division informed of a current address and telephone number; and

(14) engaging in alternate medical practice except as provided in Section R156-67-603.

R156-67-602. Medical Records.

In accordance with Subsection 58-67-803(1), medical records shall be maintained to be consistent with the following:

(1) all applicable laws, regulations, and rules; and

(2) the Code of Medical Ethics of the Council on Ethical and Judicial Affairs as published in the AMA Policy Compendium, 2001 edition, which is hereby incorporated by reference.

R156-67-603. Alternate Medical Practice.

(1) A licensed physician and surgeon may engage in alternate medical practices as defined in Subsection R156-67-102(2) and shall not be considered to be engaged in unprofessional conduct on the basis that it is not in accordance with generally accepted professional or ethical standards as unprofessional conduct defined in Subsection 58-1-501(2)(b), if the licensed physician and surgeon:

(a) possesses current generally accepted written documentation, which in the opinion of the board, demonstrates the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given;

(b) possesses the education, training, and experience to competently and safely administer the alternate medical treatment or therapy;

(c) has advised the patient with respect to the alternate medical treatment or therapy, in writing, including:

(i) that the treatment or therapy is not in accordance with generally recognized standards of the profession;

(ii) that on the basis of current generally accepted medical evidence, the physician and surgeon finds that the treatment or therapy presents no greater threat to the health, safety, or welfare of the patient than prevailing generally recognized standard medical practice; and

(iii) that the prevailing generally recognized standard medical treatment or therapy for the patient's condition has been offered to be provided, or that the physician and surgeon will refer the patient to another physician and surgeon who can provide the standard medical treatment or therapy; and

(d) has obtained from the patient a voluntary informed consent consistent with generally recognized current medical and legal standards for informed consent in the practice of medicine, including:

(i) evidence of advice to the patient in accordance with Subsection (c); and

(ii) whether the patient elects to receive generally recognized standard treatment or therapy combined with alternate medical treatment or therapy, or elects to receive alternate medical treatment or therapy only.

(2) Alternate medical practice includes the practice of homeopathic medicine.

KEY: physicians, licensing

February 19, 2002	**58-67-101**
Notice of Continuation July 19, 2001	**58-1-106(1)**
	58-1-202(1)

R156. Commerce, Occupational and Professional Licensing.
R156-71. Naturopathic Physician Practice Act Rules.
R156-71-101. Title.

These rules are known as the "Naturopathic Physician Practice Act Rules."

R156-71-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 71, as used in Title 58, Chapters 1 and 71, or these rules:

(1) "Approved clinical experience program" or "residency program" as used in Subsections 58-71-302(1)(e) and 58-71-304.2(1)(b), means a minimum 12 month program associated with a naturopathic medical school or college accredited by the Council of Naturopathic Medical Education.

(2) "Direct supervision" as used in Subsection 58-71-304.2(1)(b), means the supervising naturopathic physician, physician and surgeon, or osteopathic physician is responsible for the naturopathic activities and services performed by the naturopathic physician intern and is normally present in the facility and when not present in the facility is available by voice communication to direct and control the naturopathic activities and services performed by the naturopathic physician intern.

(3) "Direct and immediate supervision" of a medical naturopathic assistant ("assistant") as used in Subsections 58-71-102(6) and 58-71-305(7), means that the licensed naturopathic physician is responsible for the activities and services performed by the assistant and will be in the facility and immediately available for advice, direction and consultation.

(4) "Naturopathic physician intern" or "intern" means an individual who qualifies for a temporary license under Section 58-71-304.2 to engage in a naturopathic physician residency program recognized by the division under the direct supervision of an approved naturopathic physician, physician and surgeon, or osteopathic physician.

(5) "NPLEX" means the Naturopathic Physicians Licensing Examinations.

(6) "Qualified continuing education," as used in these rules, means continuing education that meets the standards set forth in Subsection R156-71-304.

(7) "Unprofessional conduct," as defined in Title 58, Chapters 1 and 71, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-71-502.

R156-71-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 71.

R156-71-104. Organization - Relationship to Rule R156-1.

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

R156-71-202. Naturopathic Physician Formulary.

(1) In accordance with Subsections 58-71-102(8) and 58-71-202, the naturopathic physician formulary which consists of noncontrolled substance legend medications deemed appropriate for the scope of practice of naturopathic physicians, the prescription of which is approved by the Division in collaboration with the Naturopathic Formulary Advisory Peer Committee, consists of the following legend drugs, listed by category:

Adrenergic Stimulators, limited to: Albuterol, Epinephrine, and Metaproteranol;

Amino Acids;

Anesthetics (local);

Antiemetics;

Antifungals, limited to: Nystatin and Fluconazole;

Antigout;

Antihistamines;

Anti-inflammatories, except DMARDS;

Antimicrobials (oral), limited to: Pencillins, 1st and 2nd generation Cephalosporins, Tetracyclines, Macrolides, Azalides, Lincosamines, Metronidazole, Hydantoins, and Sulfas;

Antimicrobials (ophthamologic), limited to: Sulfas and Macrolides;

Antimicrobials (topical);

Antivirals, limited to Acyclovir;

Biologics, limited to: Skin Testing, CDC recommended Immunizations, Toxoids, and Immunoglobulin;

Contraceptives, except implants and injections;

Corticosteroids (oral or topical), except Opthamologic Preparations;

Diabetic Agents, limited to: Insulin, and oral Hypoglycemics, except Thiazolidinediones;

Diuretics, limited to: Thiazide or Loop;

Electrolyte and Fluid Replacements;

Enzymes, limited to: Digestive and Proteolytic;

H2 Blockers;

Hormones (oral or topical), limited to: Estrogen, Progestins, and Thyroid;

Migraine Preparations, limited to: Ergotamines and Sumatriptin;

Minerals: Macro and Micro;

Osteoporosis agents, limited to: Calcitonin and Raloxifene;

Proton-Pump Inhibitors;

Urinary Antispasmodics;

Vitamins;

Other: Methergine and Pitocin, limited to use only after the uterus has been emptied;

Silver Nitrate.

(2) New categories or classes of drugs will need to be approved as part of the formulary prior to prescribing/administering.

(3) The licensed naturopathic physician has the responsibility to be knowledgeable about the medication being prescribed or administered.

R156-71-302. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-71-302(1)(f) and 58-71-302(2)(c), the licensing examination sequence required for licensure is as follows:

(1) NPLEX Basic Science Series, the State of Washington Basic Science Series or the State of Oregon Basic Science Series;

(2) NPLEX Clinical Series;

(3) NPLEX Homeopathy;

(4) NPLEX Minor Surgery; and

(5) the Utah Naturopathic Physician Practice Act Law and Rule Examination.

R156-71-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licensees under Title 58, Chapter 71 is established by rule in Section R156-1-308.

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

R156-71-304. Qualified Continuing Education.

(1) In accordance with Subsection 58-71-304(1)(a), qualified continuing education shall consist of 24 hours of qualified continuing professional education in each preceding two year period of licensure.

(2) If a licensee allows his license to expire and the application for reinstatement is received by the division within two years after the expiration date the applicant shall:

(a) submit documentation of having completed 24 hours of qualified continuing professional education required for the previous renewal period; and

(b) submit documentation of having completed a pro rata amount of qualified continuing professional education based upon one hour of qualified continuing professional education for each month the license was expired for the current renewal period.

(3) If the application for reinstatement is received by the division more than two years after the date the license expired, the applicant shall complete a minimum of 24 hours of qualified continuing professional education and additional hours as determined by the board to clearly demonstrate the applicant is currently competent to engage in naturopathic medicine.

(4) The standards for qualified continuing education are as follows:

(a) content must be relevant to naturopathic practice and consistent with the laws and rules of this state;

(b) under sponsorship of:

(i) an approved college or university; or

(ii) a professional association or organization representing a licensed profession whose program objectives are related to naturopathic practice;

(c) learning objectives must be reasonably and clearly stated;

(d) teaching methods must be clearly stated and appropriate;

(e) faculty must be qualified, both in experience and in teaching expertise;

(f) there must be a written post course or program evaluation; and

(g) documentation of attendance must be provided.

(5) Qualified continuing education shall consist of at least 10 hours of seminars, conferences or workshops addressing case management and prescribing of legend drugs.

(6) Audits of a licensee's continuing education hours may be done on a random basis by the division in collaboration with the board.

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

(8) The division in collaboration with the board may grant a waiver of continuing education requirements to a waiver applicant who documents he is engaged in full time activities or is subjected to circumstances which prevent the licensee from meeting the continuing professional education requirements established under this section. A waiver may be granted for a period of up to four years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

R156-71-502. Unprofessional Conduct.

"Unprofessional conduct" includes failure to comply with the approved formulary.

KEY: licensing, naturopaths, naturopathic physician*

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Notice of Continuation February 7, 2002	**58-1-106(1)**
	58-1-202(1)

R212. Community and Economic Development, History.
R212-4. Archaeological Permits.
R212-4-1. Authority.

Section 9-8-305 provides that the division shall make rules for the issuance of permits for the survey and excavation of archaeological resources.

R212-4-2. Purpose.

The primary purposes of issuing a permit are to:

A. Ensure that survey, excavation and related work are consistently and reliably executed by qualified personnel; and,

B. Ensure that the maximum amount of educational, scientific, archaeological, anthropological, and historical information is recovered and preserved, together with the physical recovery of items, and not lost to the people of Utah.

R212-4-3. Applicability.

This rule applies to lands owned or controlled by the state and its subdivisions, other than school or institutional trust lands. If, however, pursuant to Section 9-8-305, School and Institutional Trust Lands Administration delegates the authority to issue permits for survey or excavation on school and institutional trust lands to the division, then this rule applies to school and institutional trust lands, while that delegation is in force.

R212-4-4. Definitions.

A. Terms used in this rule are defined in Section 9-8-302.

B. In addition:

1. "board" means the Board of State History;

2. "division" means the Division of State History;

3. "director" means the Director of the division;

4. "recovery" means any disturbance, removal, appropriation, injury or destruction of archaeological resources.

5. "section" means the Antiquities Section of the division.

R212-4-5. Permit for Survey and Excavation of Archaeological Resources.

A. The division shall issue a permit for the survey or excavation of archaeological resources to individuals who demonstrate compliance with the following requirements:

1. Education, Experience, and Capabilities.

a. Archaeologists shall meet the minimum standards for education and experience set by federal regulation. The federal regulations, codified as 43 CFR 7.8, Subtitle A (October 1, 2000 Edition) as amended, Issuance of permits are hereby incorporated by reference.

b. Applicants shall submit a resume or vita as proof of compliance.

c. Provide written evidence indicating the ability to conduct surveys or the proposed excavation in a manner consistent with current professional practice, including access to proper equipment and facilities, and use of other personnel qualified to execute portions of the research design.

2. Possess written permission from the landowner to enter the property for the purpose of excavation or survey.

B. For excavation permits, the division shall require that the applicant:

1. Provide a research design which:

a) explicitly states the questions to be addressed;

b) the reasons for conducting the work;

c) defines the methods to be used;

d) describes the analysis to be performed;

e) outlines the expected results and the plans for reporting;

f) evaluates expected contributions of the proposed archaeological work to archaeological science and the field of anthropology or related disciplines;

g) provides for recovery of the maximum amount of historic, scientific, archaeological, anthropological, and educational information;

h) provides that the physical recovery of specimens and the reporting of archaeological information meet current standard of scientific rigor; and

i) provides that no specimen, site or portion of any site is removed from the state of Utah without explicit permission from the division and after consultation with landowners and any other agency managing any interest in the land.

2. Possess written proof of consultation with the appropriate Native American Tribe or Nation, if required by law.

3. Provide written proof of consultation with the Museum of Natural History.

4. Possess written proof of consultation with other agencies that manage other legal interests in the land.

C. Provide any other information requested by the division.

R212-4-6. Permit Provisions.

Permits shall contain the following provisions:

A. The permittees shall provide reports documenting results of the work and data obtained, and deliver relevant records, site forms, and reports to the section within the time specified in the permit.

B. A permittee who discovers human remains shall notify the landowner, and appropriate agencies pursuant to Section 9-9-403, and cease further activity, except after compliance with Section 9-9-403.

C. If the permittee fails to comply with statute, rule or the provisions of the permit, the division may terminate the permit and continue the study or grant another permittee the responsibility or opportunity to complete the research design.

D. Duration of Permits.

1. Permits for survey shall be issued for one year.

2. Permits for excavation shall be issued for the period of time necessary to accomplish the proposed work. The period of time may be extended by the division upon application of the permittee.

3. The Museum of Natural History shall be consulted if the duration of an excavation permit is to be modified.

E. Other provisions the division deems necessary.

R212-4-7. Application Review.

A. Application for a survey or excavation permit shall be made on a form provided by the section. Applicants shall fully complete the application form.

B. Applicants shall be notified of the acceptance or rejection of the completed application within 30 calendar days.

R212-4-8. Appeal of Decision.

Any applicant desiring review of a decision concerning an application may appeal the decision pursuant to R212-1.

R212-4-9. Violations of Statute or Rule.

If the division receives information indicating a violation of statute or rule, the division shall make a good faith effort to notify the alleged violator of the legal requirements and potential penalties. The division shall also notify the landowner, and take other actions deemed necessary.

R212-4-10. Records Access.

The division shall maintain records of archaeological sites and localities. Access to location information within these records shall be restricted to those with legitimate research interests, and those holding valid permits, landowners, or state or federal agencies in accordance with the requirements contained in 16 USC 470 Section 304, the National Historic Preservation Act of 1966, as amended, and Title 63, Chapter 2.

R212-4-11. Exceptions.

Exceptions to this rule may be granted, with landowner permission, in emergency cases requiring immediate action, if in the best judgment of the division the intent of the law will not be compromised. The division shall require that a permit application be filed as soon as possible. The division shall notify the board of this action as soon as possible.

KEY: administrative procedure, archaeology*
1993 **9-8-302**
Notice of Continuation September 26, 2001 **9-8-305**
9-9-403
63-2
16 USC 470 Sec. 304
43 CFR 7.8 Subtitle A

R212. Community and Economic Development, Community Development, History.
R212-6. State Register for Historic Resources and Archaeological Sites.
R212-6-1. Scope and Applicability.

Purpose: To establish compatibility between the State and National Register. To establish standards for state landmarks consistent with Sections 9-8-306, 9-8-401, 9-8-402 and 9-8-403.

R212-6-2. Definitions.

A. Terms used in this rule are defined in Sections 9-8-302 and 9-8-402(1).

B. In addition:

1. "division" means the Division of State History;

2. "director" means the director of the Division of State History;

3. "board" means the Board of State History.

R212-6-3. State Register for Historic Resources and Archaeological Sites.

1. The State Register for properties and sites incorporates by reference, within this rule, 36 CFR 60.4, 1996 Edition for the selecting of properties and sites as historical places within Utah.

2. Properties or sites recommended for National Register consideration shall automatically be listed on the State Register after they have been recommended by the Board of State History for National Register listing and after the State Historic Preservation Officer has nominated them for listing on the National Register.

3. Should a property or site be found to be ineligible for the National Register by the Keeper of the National Register, National Park Service, that property may be reviewed for removal from the State Register.

5. Properties or sites may be removed from Century and State Registers only after notification to the owner and a hearing by the board, unless they have been entirely demolished, in which case they may be removed administratively by division staff following state procedures for removal.

R212-6-4. State Landmark Listing for Archaeological and Anthropological Sites and Localities.

Archaeological and anthropological sites and localities listed on the State Register may be listed as "State Landmarks" after nomination by the property owners and review and acceptance by the Board of State History.

KEY: historic sites, national register*, state register*

February 21, 2002	**9-8-302**
Notice of Continuation September 26, 2001	**9-8-306**
	9-8-401
	9-8-402
	9-8-403
	63-46b-1

R212. Community and Economic Development, Community Development, History. **16 USC 470 Sec. 106**
16 USC 470 Sec. 110

R212-7. Cultural Resource Management.

R212-7-1. Scope and Applicability.

Purpose: to establish time frames and procedures in response to state and federal agency requests in conformance with applicable state and federal cultural resource management laws contained in Section 9-8-404; 36 CFR 800 and 16 USC 470 Section 110 of the National Historic Preservation Act as amended.

R212-7-2. Definitions.

A. Terms used in this rule are defined in Section 9-8-302, 36 CFR 800, and 16 USC 470 Section 110 of the National Historic Preservation Act as amended.

B. In addition:

1. "division" means the Division of State History;

2. "director" means the director of the Division of State History;

3. "agency" means the federal or state agency seeking division comments.

R212-7-3. Conformance of Division to State Rules and Federal Regulations.

A. The Division of State History will follow applicable regulations pursuant to an annually executed agreement with the National Park Service and state rules to insure that its activities take into account the effect on cultural.

1. The division shall seek creative solutions to avoid or minimize adverse effects on cultural resources and seek ways to allow adverse effects to be mitigated creatively when they cannot be avoided.

B. In the interest of the public, the division shall encourage alternative proposals which may allow for the destruction of a site(s) or area(s) when alternative mitigation or treatment plans can be made which will allow for the development, endowment, promotion, scientific investigation of other resources more suited to public education, education involvement, appreciation and science.

R212-7-4. Division Responsibility to Other Agencies.

1. The division may consult with or provide professional information to state and federal agencies requesting consultation under Section 9-8-404 and under 16 USC 470 Sections 106 and 110 the Historic Preservation Act of 1966 as amended. These federal regulations are incorporated here by reference.

2. The information provided will be regarding the Secretary of the Interior Standards.

3. If the division responds, then it shall state that the agency shall take into account the comments.

4. Responses may be provided within 30 days of receipt of request.

5. Adequate completion of permit requirements for excavation on lands may satisfy mitigation as far as the State Historic Preservation Officer is concerned.

KEY: historic preservation, cultural resource*, management
February 21, 2002 **9-8-302**
Notice of Continuation September 26, 2001 **9-8-404**

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

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

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

R251-107-2. Definitions.

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

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

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

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

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

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

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

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

(9) "USP" means Utah State Prison.

R251-107-3. Crowd Control.

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

(a) security;

(b) official escort or movement;

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

(d) safety.

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

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

(b) be dealt with in a courteous manner.

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

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

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

(a) the trespass was intentional;

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

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

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

R251-107-4. Selection of Executioners.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) The Executive Director/designee shall contact those

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

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

R251-107-5. Demonstration and Public Access.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

R251-107-6. Visitor Parking.

(1) Parking shall be prohibited:

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

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

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

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

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

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

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

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

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

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

(a) I-15, Utah Highway Patrol;

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

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

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

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

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

R251-107-7. Witnesses.

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

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

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

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

R251-107-8. Personal Searches.

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

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

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

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

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

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

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

R251-107-9. News Media.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) two Salt Lake City daily newspapers;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) being issued special identification credentials;

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

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

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

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

(A) removal of the body of the condemned;

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

(C) clean up of the execution site.

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

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

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

(B) one pool television photographer; and

(C) one pool newsprint photographer.

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

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

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

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

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

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

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

(l) Should extraordinary circumstances develop, additional

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

R251-107-10. Security Zones.

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

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

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

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

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

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

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

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

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

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

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

(a) criminal violations;

(b) traffic violations;

(c) parking violations; and

(d) threatening or disruptive behavior.

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

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

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

R251-107-11. Regular Inmate Visiting.

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

R251-107-12. Authority of Executive Director.

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

KEY: corrections, executions*, prisons

January 15, 1998 **77-19-10**

Notice of Continuation February 20, 2002 **77-19-11**

R277. Education, Administration.
R277-617. Authorization of Student Clubs and Organizations.
R277-617-1. Definitions.

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

B. "Club" means an organization for students that meets outside of regular classroom hours in a school.

C. "School club" means a club organized and directed by school sponsors.

D. "Supervised student club" means a club organized and operated by students with the permission of school authorities, and operated by students under the close supervision of a faculty supervisor.

E. "Monitored student club" means a club organized and operated by students with the permission of school authorities; a faculty monitor is assigned to the club to provide support as necessary and to monitor activities to ensure compliance with applicable school policies.

R277-617-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board; provides direction to local boards under Section 53A-3-419; and reflects principles set forth by the United States Supreme Court in addressing the authority and responsibilities of public school officials:

(1) "The undoubted freedom to advocate unpopular and controversial views in schools and classrooms must be balanced against the society's countervailing interest in teaching students the boundaries of socially appropriate behavior." Bethel v. Fraser, 478 U.S. 675 (1986)

(2) "A school need not tolerate student speech that is inconsistent with its 'basic educational mission,' even though the government could not censor similar speech outside the school." Hazelwood School Dist. v. Kuhlmeier, 484 U.S. 260 (1988)

(3) "We have also recognized an interest in protecting minors from exposure to vulgar and offensive spoken language. . . .[v]ulgar speech and lewd conduct is [sic] wholly inconsistent with the fundamental values of public education." Bethel v. Fraser, 478 U.S. 675 (1986)

(4) "[The Equal Access Act] does not limit a school's authority to prohibit meetings that would 'materially and substantially interfere with the orderly conduct of educational activities within the school' . . . [and] also preserves 'the authority of the school, its agents or employees, to maintain order and discipline on school premises, to protect the well-being of students and faculty, and to assure that attendance of students at meetings is voluntary.'" Board of Education v. Mergens, 496 U.S. 226 (1990)

B. The purpose of this rule is to provide guidance to local school boards regarding:

(1) authorization of clubs;

(2) protecting the physical, emotional, psychological, and moral well-being of students;

(3) maintaining order and discipline on school premises; and

(4) preventing material and substantial interference with the orderly conduct of a school's educational activities.

R277-617-3. Authorization of Clubs.

A. A local school board may authorize the following types of clubs by grade level:

(1) Grades K-6: only school clubs may be authorized in any of grades K-6.

(2) Grades 7-9: both school clubs and supervised student clubs are permissible in grades 7-9, except as provided in R277-617-3C.

(3) Grades 10-12: school clubs, supervised student clubs, and monitored student clubs are permissible in grades 10-12.

B. Each local school board shall adopt policies governing the establishment of clubs in the schools of the district. The policies shall include the following:

(1) Students or school staff seeking authorization to establish a club shall prepare a club charter setting forth the name and purposes of the club, describing the types of activities in which club members may be engaged, and establishing limitations upon club activities. Those limitations shall include prohibitions against:

(a) Action or advocacy of imminent action which violates the law or administrative rule; this prohibition shall not apply to appropriate discussions concerning the changing of laws or rules, or actions taken through appropriate channels or procedures to effectuate such changes.

(b) Advocacy or approval of sexual activity outside of marriage, or presentations in violation of laws or regulations governing sex education or privacy rights of families or individuals.

(c) Action or advocacy of imminent action involving the harassment or the denigration of any person.

(d) Action or advocacy of imminent action with the intent to cause a person to fear to freely exercise or enjoy any right secured by the Constitution or laws of the United States or the state of Utah.

(2) Authorization to establish a club may not be granted unless the authorizing authority has made a specific finding that the club, if approved, would be in compliance with Section 53A-3-419.

(3) Selection and appointment of club sponsors, supervisors, and monitors shall be the responsibility of the school principal unless another person is designated in the board policy.

C. Religious clubs may be permitted for students in grades 7-12. Such clubs shall be authorized as monitored clubs.

D. Clubs shall not engage in or conduct mental health therapy, counseling or psychological services for which a license would be required under Title 58, Chapters 60 or 61.

E. A local board may permit administrative review and approval of club applications, but shall provide for an appeal by a student directly affected by an administrative decision.

F. A local board may delegate to schools the authority to decide the following, provided that all clubs of a given type (i.e. supervised or monitored student clubs) are given equal access:

(1) the time and place that a club may meet; and

(2) club access to the school newspaper, yearbook, bulletin boards, public address system, or any combination of the foregoing.

G. A local board may require informed, written parental consent prior to a student's attending or joining a club, provided

that any such rule shall apply to all clubs of the grade level and type (school, supervised, monitored) in question.

H. A local board policy may provide for approval of a club name in an action separate from that relating to the approval of the club itself. The board may require:

(1) that a club name reasonably reflect the nature, purposes and activities of the club; and

(2) that the club name be such that it would not result in undue disruption of school operations, subject students to harassment or persecution, imply that the club would operate in violation of Section 53A-3-419 or other law or rule, or imply inappropriate association with outside organizations or groups.

I. A local board may limit access to clubs by persons who are not part of the school, including prohibiting outside persons from directing, conducting, controlling, or regularly attending club meetings.

J. A local board may adopt additional policies governing clubs in accordance with the board's obligation to teach students the boundaries of socially appropriate behavior and to restrict activities which are harmful or contrary to the basic educational mission of the school. A board may also adopt additional policies which it finds to be necessary to protect the rights of parents and students; to protect the well-being of students and faculty; to maintain order and discipline on school premises; or to prevent material and substantial interference with the orderly conduct of a school's educational activities.

K. A local board which permits the formation of non-curricular related clubs may not adopt a policy prohibiting the formation of such a club simply on the basis of the controversial nature of the proposed club if the activities and assurances set forth in the charter and application are consistent with applicable laws and rules.

L. Local boards shall provide for oversight of club programs and activities to ensure compliance with the approved club charter and applicable laws and rules. Board policies shall set forth procedures and penalties applicable to cases of noncompliance.

R277-617-4. Limiting Authorization to Curriculum Related Clubs.

A. A local board may limit, or permit a secondary school to limit, clubs to those which are curriculum related.

B. A curriculum related club is defined as follows:

(1) The subject matter of the club is actually taught or soon will be taught in a regular course;

(2) The subject matter of the club concerns the body of courses as a whole;

(3) Participation in the club is required for a particular course; or

(4) Academic credit is given for participation in the club.

KEY: extracurricular activities
February 19, 1997 **Art X Sec 3**
Notice of Continuation February 6, 2002 **53A-3-419**

R277. Education, Administration.
R277-915. Work-based Learning Programs for Interns.
R277-915-1. Definitions.

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

B. "Intern" means a student enrolled in a school-sponsored work experience and career exploration program under Section 53A-29-102 involving both classroom instruction and work experience with a cooperating employer, for which the student receives no compensation.

C. "Work site" or "workplace" means the actual location where employment occurs for particular occupation(s), or an environment that simulates all aspects/elements of that employment, for instance school-based enterprises.

D. "Work-based learning" means activities that involve actual work experience or connect classroom learning to work.

E. "School-based enterprise" means businesses set up and run by supervised students learning to apply "practical" skills in the production of goods or services for sale or use by others.

R277-915-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board; by Section 53A-29-102 which provides that the Board shall provide rules to schools wishing to offer and operate internships in connection with work experience and career exploration programs; and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide direction to school districts as they provide work-based learning programs and to establish criteria to be included in those polices.

R277-915-3. Mandatory District Policy.

A. Each school district that has work-based learning programs that include assigning students to act as interns at off-campus sites or on-campus simulations shall establish a policy which provides procedures and criteria for at least the following issues:

(1) training for student interns, student intern supervisors, and cooperating employers regarding health hazards and safety procedures in the workplace;

(2) standards and procedures for approval of off-campus work sites;

(3) transportation options for students to and from the work site;

(4) appropriate supervision by employers at the work site;

(5) adequate insurance coverage provided either by the student, the program or the school district;

(6) appropriate supervision and evaluation of the student by the local education agency; and

(7) appropriate involvement and approval by the student's parents in the work-based intern program.

R277-915-4. Consistency with Law and State and Local Board Rules and Policies.

A. The work-based intern experience shall be consistent with the provisions of the Fair Labor Standards Act, Part 570, Subpart E, 29 C.F.R., pages 89.16 et seq., June 1995 and Administrative Letter Rulings: Department of Labor, Wage and Hour Division, pages 226 and 228, July 1996. These materials are contained within the Fair Labor Standards Handbook, are available in the School Law Section at the Utah State Office of Education and are hereby incorporated by reference.

B. Work-based intern programs shall operate consistently with Board rules and district polices including student transportation, credit toward graduation, attendance, and fee waivers.

KEY: public schools, intern program*
March 10, 1997 **Art X Sec 3**
Notice of Continuation February 28, 2002 **53A-29-102**
53A-1-401(3)

R307. Environmental Quality, Air Quality.
R307-105. General Requirements: Emergency Controls.
R307-105-1. Air Pollution Emergency Episodes.

(1) Determination of an episode and its extent or stage shall be made by the Executive Secretary taking into consideration the levels of pollutant concentrations contained at 40 CFR Section 51.151 and 40 CFR Section 51, Appendix L, and summarized in the table below:

TABLE

AIR POLLUTION EPISODE CRITERIA
(values in micrograms/cubic meter unless stated otherwise)

POLLUTANT	ALERT	WARNING	EMERGENCY	NEVER TO BE EXCEEDED
SULFUR DIOXIDE 24-hour average	800 (0.3 ppm)	1,600 (0.6 ppm)	2,100 (0.8 ppm)	2,620 (1.0 ppm)
PM10 24-hour average	350	420	500	600
CARBON MONOXIDE				
8-hour average	17,000 (15 ppm)	34,000 (30 ppm)	46,000 (40 ppm)	57,500 (50 ppm)
4-hour average				86,300 (75 ppm)
1-hour average				144,000 (125 ppm)
OZONE				
1-hour average	400 (0.2 ppm)	800 (0.4 ppm)	1,000 (0.5 ppm)	
2-hour average				1,200 (0.6 ppm)
NITROGEN DIOXIDE 1-hour average	1130 (0.6 ppm)	2,260 (1.2 ppm)	3,000 (1.6 ppm)	3,750 (2.0 ppm)
NITROGEN DIOXIDE 24-hour average	282 (0.15 ppm)	565 (0.3 ppm)	750 (0.4 ppm)	938 (0.5 ppm)

An air pollution alert, air pollution warning, or air pollution emergency will be declared when any one of the above pollutants reaches the specified levels at any monitoring site.

In addition to the levels listed for the above pollutants, meteorological conditions are such that pollutant concentrations can be expected to remain at the above levels for twelve (12) or more hours or increase, or in the case of ozone, the situation is likely to reoccur within the next 24-hours unless control actions are taken.

ALERT The Alert level is that concentration at which first stage control action is to begin.

WARNING The warning level indicates that air quality is continuing to degrade and that additional control actions are necessary.

EMERGENCY The emergency level indicates that air quality is continuing to degrade toward a level of significant harm to the health of persons and that the most stringent control actions are necessary.

(2) The Executive Secretary shall also take into consideration, to determine an episode and its extent, rate of change of concentration, meteorological forecasts, and the geographical area of the episode, including a consideration of point and area sources of emission, where applicable.

R307-105-2. Emergency Actions.

(1) If an episode is determined to exist, the Executive Director, with concurrence of the Governor shall:

(a) Make public announcements pertaining to the existence, extent and area of the episode.

(b) Require corrective measures as necessary to prevent a further deterioration of air quality.

(2) Episode termination shall be announced by the Executive Director, with concurrence of the Governor, once monitored pollutant concentration data and meteorological forecasts determine the crisis is over.

KEY: air pollution, emergency powers, governor*, air pollution
September 15, 1998 19-2-112
Notice of Continuation June 2, 1997

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. 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 is covered under an absent parent's insurance coverage that does not provide coverage in the State of Utah is eligible for enrollment.

(4) A child who is covered under a group health plan or other health coverage but has reached the lifetime maximum coverage under that plan is eligible for enrollment.

(5) A child who has access to health insurance coverage 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.

(6) The Department shall deny eligibility if the applicant or a custodial parent has voluntarily terminated health insurance coverage in the 90 days prior to the application date for enrollment under CHIP. An applicant or applicant's parent(s) who voluntarily terminates COBRA coverage or who is involuntarily terminated from an employer's plan is eligible for CHIP without a 90 day waiting period.

(7) A child with creditable health coverage operated or financed by the Indian Health Services is not excluded from enrolling in the program.

(8) 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.

(9) 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.

(10) 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;

(e) The spouse of any child who is included in the household size; and

(f) Unborn children of anyone 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 the parents and step-parents of any child who is included in the household size, is counted toward household income, unless this section specifically describes a different treatment of the income.

(1) The Department does not count 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) Income of a child is excluded if the child is not the head of a household.

(16) Educational income such as educational loans, grants, scholarships, and work-study programs are not countable income. The individual must verify enrollment in an educational program.

(17) Reimbursements for expenses incurred by an individual are not countable income.

(18) Any payments made to an individual because of his status as a victim of Nazi persecution as defined in Pub. L. No. 103-286 are not countable income, including payments made by the Federal Republic of Germany, Austrian Social Insurance payments, and Netherlands WUV payments.

(19) Victim's Compensation payments as defined in Pub. L. No. 101-508 are not countable income.

(20) Disaster relief funds received if a catastrophe has been declared a major disaster by the President of the United States as defined in Pub. L. No. 103-286 are not countable income.

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) The Department shall determine farm and self-employment income by using the individual's recent tax return forms. If tax returns are not available, or are not reflective of the individual's current farm or self-employment income, the Department shall request income information from a recent time period during which the individual had farm or self-employment income. The Department shall deduct 40% of the gross income as a deduction for business expenses to determine the countable income of the individual. For individuals who have business expenses greater than 40%, the Department shall request expense information and deduct the expenses from the gross 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.

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 in person, through the mail, over the telephone or by fax at any local office.

(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. The Department will allow a grace enrollment period beginning no earlier than four days before the date a completed and signed application is received by the Department if a child has had an

emergency that delayed the completion of the application. 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, or by the last day of the month immediately following the recertification month, and the child continues to be eligible.

(5) If the recertification is not completed 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 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*
February 7, 2002 **26-1-5**
26-40

R430. Health, Health Systems Improvement, Child Care Licensing.
R430-50. Residential Certificate Child Care Standards.
R430-50-1. Legal Authority.

This rule is promulgated pursuant to Title 26, Chapter 39.

R430-50-2. Purpose.

This rule establishes standards to protect the health and safety of children who receive services from a residential certificate child care provider.

R430-50-3. Definition.

(1) "Residential certificate child care" means child care provided in the home of a provider for five to eight children, having a regularly scheduled, ongoing enrollment, for direct or indirect compensation.

(2) "Supervision" means the function of observing, overseeing, and guiding a child or group of children.

R430-50-4. Voluntary Certificate.

A provider of child care for less than five children in the providers home may request a residential certificate.

R430-50-5. Owner Qualifications.

(1) To be eligible for an initial residential certificate the owner must:

(a) be at least 18 years of age;

(b) have a current course completion in basic first-aid and Cardiac Pulmonary Resuscitation (CPR). First-aid and CPR certification refers to courses given by the American Red Cross, the Utah Emergency Medical Training Council, or other courses that the licensee can demonstrate to the Department to be equivalent; and

(c) meet at least one of the following:

(i) have a high school diploma or G.E.D.;

(ii) be an approved federal food program provider as of July 1, 1998; or

(iii) if (i) or (ii) cannot reasonably be met by the owner and an undue hardship is created, the owner may request a variance from the Department.

(2) The owner shall complete a minimum of five hours of Department approved training within 90 days of initial certificate issuance. Documentation of training shall be maintained at the home of the owner. Training will be Department-approved if it includes:

(a) reporting requirements for witnessing or suspicion of abuse, neglect and exploitation;

(b) proper hand washing and sanitation techniques;

(c) recognizing early signs of illness and determining if there is a need to exclude a sick child from the home;

(d) accident prevention and safety principles;

(e) positive guidance for the management of children;

(f) child development;

(g) age appropriate activities for children; and

(h) If child care is provided to children under the age of two, the training must also include:

(i) Preventing Shaken Baby Syndrome;

(ii) Coping with crying babies; and

(iii) Preventing Sudden Infant Death Syndrome.

(3) The owner shall ensure that each care giver who has direct contact with or access to children successfully completes the required five hours of department approved training before starting assigned duties.

R430-50-6. Care Giver to Child Ratios.

(1) The owner may not care for more than eight children including the owner's own children under age four. The owner also may not care for more than two children under age two, including the owner's own children under age two.

(2) The owner or substitute care giver shall be physically present on-site and provide care and supervision of children at all times, both indoors and outdoors. This includes:

(a) awareness of and responsibility for the ongoing activity of each child and being near enough to intervene if needed; and

(b) frequent in person observations of children sleeping in cribs and play pens.

(3) The owner may permit a child to participate in supervised out of home activities without the care giver if:

(a) the care giver has prior written permission from the child=s parent or guardian for the child=s participation; and

(b) the licensee has clearly assigned the responsibility for the child=s whereabouts and supervision throughout the period of care

(4) The owner may make arrangements for a substitute who is at least 18 years old and who is capable of providing care and supervision of children and handling emergencies in the absence of the care giver.

R430-50-7. Child Discipline.

(1) The owner shall inform all care givers, parents or guardians and children of expected conduct by setting clear and understandable rules.

(2) Disciplinary measures shall be implemented so as to encourage the child's self-control to reduce the risk of injury and any adverse health effects to self or others. Positive discipline measures include but are not limited to:

(a) positive behavioral rewards;

(b) other forms of positive guidance;

(c) redirection; or

(d) time out.

(3) Discipline measures shall not include any of the following:

(a) corporal punishment, including hitting, shaking, biting, pinching, or spanking;

(b) restraining a child's movement by binding or tying;

(c) using abusive, demeaning or profane language;

(d) withdrawal of food or bathroom opportunities; or

(e) confining a child in a locked closet, room, or similar area; or

(f) forcing or withdrawing food, rest, or bathroom opportunities.

R430-50-8. Records.

(1) The owner shall obtain from the parent or legal guardian an admission agreement, which identifies the following:

(a) child's full name and nickname;

(b) parent or guardian's name, address and day time phone

number;

(c) name, address and phone number of at least one additional person to be notified in the event of an emergency if the parent or guardian cannot be located;

(d) name, address and phone number of the child's primary source of emergency health and dental care;

(e) description of any food sensitivities, allergies or special food needs; and

(f) immunization record.

(2) The owner shall obtain, in advance, from the parent or legal guardian the names, addresses and phone numbers of persons authorized to take the child from the residence.

(3) The owner shall maintain documentation that all individuals in the home comply with R430-6, Background Clearance.

R430-50-9. Child Health and Medications.

(1) The owner shall inform the parents or guardians of all injuries and incidents that occur during the child's stay at the home.

(a) The owner shall immediately notify the parents or guardians if medical treatment is required.

(b) For any emergency that requires a response by emergency medical treatment providers, fatality, or hospitalization of a child in care, the owner shall:

(i) notify the Department within 24 hours of occurrence, either by phone or facsimile; and

(ii) submit to the Department within five business days of occurrence a written injury and accident report.

(2) If an owner chooses to administer medications, then the oral over-the counter and all prescription medications must be in the original or pharmacy container, have the original label, include the child's name, have child proof caps, and have written instructions for administration.

(a) The parent or guardian shall provide written permission for the administration of all medications.

(b) The owner shall report any adverse reaction to a medication or error in administration to the parent or legal guardian immediately upon recognizing the error or reaction.

(c) The owner shall ensure that all medications are secured from access to children. If medications are required to be refrigerated, then they shall be stored in spill-proof packaging.

(d) The owner will return all unused and out-of-date medications to the parent or guardian.

(3) The owner may not admit or provide care to a child without proof of current immunizations, or evidence of conditional enrollment, or evidence of a personal, medical or religious exemption. Conditional enrollment means that the child has received at least one dose of each required vaccine prior to enrollment and be on a schedule for subsequent immunizations.

(4) The owner shall inform parents of communicable illnesses or parasites on the day of discovery.

(5) The owner shall ensure that the use and accessibility to illegal substances or sexually explicit materials are prohibited by any person anywhere on the premises during the hours of operation when children are in care.

R430-50-10. Fire, Safety, and Sanitation.

(1) The owner shall have a disaster plan in case of fire, flood, earthquake, blizzard, power failure or other disasters that could create structural damage to the facility or pose a health hazard. The owner shall also have an emergency plan in the case of a missing child, death or serious injury to a child, which includes the name of a substitute care giver in the event the owner must leave the residence for any reason.

(a) A first aid kit shall be available in the home.

(b) The owner shall maintain an operating telephone in the home, unless there is a utility failure.

(c) The owner shall post the names and telephone numbers of the emergency medical personnel, fire department, police, and poison control by the telephone.

(2) The owner shall maintain fire extinguishers and smoke detectors in good operating condition on each floor occupied by children. Two exits, leading to an open space at ground level, shall be present to permit the orderly evacuation of children. If the basement is used to provide child care, at least one exit shall be present leading to an open space at ground level.

(3) Each home shall have an outdoor play space which is safe, free from hazards, located away from traffic or water hazards, and is available on the premises or is easily and safely accessible to the home. If a fence is required to protect children from any traffic or water hazards then the fence shall be at least four feet high. If local ordinances conflict, the owner may request a variance from the Department. Any gaps within the fence and the bottom edges of the fence shall not be more than three and one-half inches above the ground.

(4) If children are diapered at the home, then diapering shall occur in an area separate from food storage, food preparation, and eating area. A smooth nonabsorbent diaper changing surface and a sanitary container for soiled and wet diapers shall be available.

(5) Care givers and children shall wash their hands after using the toilet, before and after eating and before and after food preparation.

(6) Equipment and furniture must be durable, in good repair, structurally sound, and stable. Indoor and outdoor play spaces, toys and equipment shall be maintained in a safe manner to prevent injury to children.

(7) Dangerous items, such as sharp objects, medicines, plastic bags, and poisonous plants and chemicals, including household supplies, must be stored out of reach of children.

(8) Electrical outlets accessible to children four years of age and younger shall be protected or capped with safety devices.

(9) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(10) There shall be adequate housekeeping to maintain a clean and sanitary home, to control, and eliminate the presence of insects, rodents, and other vermin on the premises.

(11) There shall be no firearms or other weapons accessible to children. Firearms and other weapons shall be stored separately from ammunition and all shall be in a locked cabinet or area during times when children are on the premises, unless the use is in accordance with UCA 53-5-701 Concealed Weapons Act, UCA 76-10-523 Persons Exempt from Weapons Laws or as otherwise authorized by law.

(12) If the owner has pets at the home:

(a) the animals shall be clean and in good health;

(b) the animals shall have current vaccination records available for all diseases transmissible to humans;

(c) the animals shall have no history of dangerous or aggressive behavior;

(d) the children shall not clean nor assist with the cleaning of animals, animal cages, pens or equipment;

(e) the animal cages and equipment shall not be cleaned in food preparation or food storage areas; and

(f) Children shall not be permitted to handle reptiles, including turtles and lizards.

R430-50-11. Transportation.

Only the owner may transport children in non-public vehicles. Children must be transported in the following manner:

(1) The vehicle is licensed, registered and inspected.

(2) The owner has a current Utah driver's license.

(3) The vehicle and owner are insured.

(4) The vehicle is equipped with individual, size appropriate safety restraints.

R430-50-12. Food Service.

(1) A meal or snack shall be served to the children at least every three hours. Infants shall be fed on demand or according to parent directions.

(2) The food preparation area shall be clean and sanitary.

(3) All care givers who prepare or serve food and snacks must have a current food handlers permit.

R430-50-13. Penalty.

The Department may impose civil monetary penalties in accordance with Title 63, Chapters 46b, Administrative Procedures Act and Section 26-39-108, if there has been a failure to comply with the provisions of this chapter, or rules promulgated pursuant to this chapter, as follows:

(1) if significant problems exist that are likely to lead to the harm of a child, the department may impose a civil money penalty of $50 to $1,000 per day; and

(2) if significant problems exist that result in actual harm to a child, the department may impose a civil money penalty of $1,050 to $5,000 per day.

KEY: child care facilities
February 15, 2002 **26-39**

R430. Health, Health Systems Improvement, Child Care Licensing.
R430-60. Hourly Child Care Center.
R430-60-1. Legal Authority.

This rule is promulgated pursuant to Title 26, Chapter 39.

R430-60-2. Purpose.

The purpose of this rule is to establish standards for the operation and maintenance of hourly care child care centers. It establishes minimum requirements for the health and safety of children in licensed programs. Hourly programs which would permit children to access the entire facility or area if the children are attended by parents, are exempt from the requirement to obtain a license.

R430-60-3. Definitions.

"Direct Supervision" means that the care giver can see and hear the children under age six, and is near enough to intervene when needed. Care givers must be able to hear school-age children and be near enough to intervene.

R430-60-4. License Required.

A person must obtain an hourly child care center license if he:

(1) provides child care not in a personal residence;

(2) provides care for five or more children for less than 24 hours a day, but not on a regular schedule; and

(3) receives direct or indirect compensation.

R430-60-5. Administration and Organization.

(1) The licensee of the program shall exercise supervision over the affairs of the program and assure:

(a) compliance with federal, state, and local laws and for the overall organization, management, operation and control of the facility;

(b) establishment and implementation of policies and procedures for the health and safety of children in the center; and

(c) appointment of a qualified director who shall assume full responsibility for the day-to-day operation and management of the facility.

(2) The director of the hourly care program shall have the following qualifications:

(a) be at least 21 years of age;

(b) have knowledge of applicable laws and rules;

(c) except for directors of a program licensed before June 1, 1998, the director must have a high school diploma or GED equivalent; and:

(i) a bachelor's or associate's degree in Early Childhood Education or Child Development; or

(ii) a bachelor's degree in a related field with documented four courses of higher education completed in child development; or

(iii) a national or state certification such as Certified Childcare Professional, National Administrator Credential, Child Development Associate (CDA); or

(iv) two years experience in child care, elementary education, or a related field.

(3) The director shall ensure that adequate direct supervision is maintained whenever the program is operating. The care giver-to-child ratios established in R430-60-9 are minimum requirements only. The director shall ensure that policies exist to adjust these ratios when the age and number of children require additional care givers to maintain adequate levels of supervision and care.

R430-60-6. Personnel.

(1) The director shall ensure that each care giver and volunteer who has direct contact with or access to children are oriented to the licensed program and successfully completes the required orientation training before starting assigned duties. The completion of the orientation must be documented in the individual's personnel record. The orientation training must include:

(a) procedures for maintaining health and safety, and handling emergencies and accidents;

(b) specific job responsibilities;

(c) child discipline procedures of R430-60-8;

(d) reporting requirements for witnessing or suspicion of abuse, neglect and exploitation; and

(e) releasing children to authorized individuals.

(2) All care givers employed to meet the minimum care giver to child ratios who provide services shall be at least 18 years of age or have completed high school or a GED. In addition to the required staff ratios, an individual who is 16 years old, if he works under the direct supervision of a competent care giver who has completed the minimum of 10 hours in-service training ,may provide childcare services.

(3) There shall be at least one care giver on duty in the center during business hours who has a current course completion in basic child and infant first-aid and Cardiac Pulmonary Resuscitation (CPR), and training in the Heimlich maneuver for treatment of an obstructed airway. First-aid and CPR refers to courses given by the American Red Cross, the Utah Emergency Medical Training Council, or other courses that the licensee can demonstrate to the Department to be equivalent;

(4) All care givers shall receive a minimum of 10 hours of documented in-service training annually. At least five hours of in-service training shall be in person from a person not affiliated with the license holder. The training shall include the following:

(a) accident prevention and safety principles;

(b) positive guidance for the management of children;

(c) child development; and

(d) age appropriate activities for children.

(5) If childcare is provided to children under the age of two, the following in-service topics are required:

(a) Preventing Shaken Baby Syndrome;

(b) Coping with crying babies; and

(c) Preventing Sudden Infant Death Syndrome.

(6) The licensee shall ensure that all care givers complete in-service training, and a record of the fact is made in the care giver's personnel record. The record must include the date training was completed, the topics covered, and trainer's name and organizational affiliation.

(7) The director shall ensure that all care givers are screened for tuberculosis using the Mantoux tuberculin skin test

method within two weeks of assuming care giver responsibilities. Tuberculin skin testing does not need to be repeated during the employment period unless the employee develops signs and symptoms of the disease, as determined by a health care professional.

(a) All care givers with a skin test that indicate potential exposure to tuberculosis shall receive a medical evaluation for tuberculosis disease.

(b) All care givers who have documentation of previous positive reaction to the Mantoux tuberculin skin test shall present documentation of completion of therapy for tuberculosis infection or evidence of a negative chest radiograph within the past 12 months.

(c) Repeated chest radiographs are not required unless the care giver develops signs and symptoms of tuberculosis disease, as determined by a health care professional.

R430-60-7. Records.

(1) The licensee shall ensure that the parent or legal guardian completes an admission agreement, which identifies the following:

(a) child's full name and nickname;

(b) parent's name and emergency numbers, if the parent will not be on-site;

(c) attestation statement and health evaluation identifying:

(i) allergies and food sensitivities; and

(ii) medical conditions, including a certification that all immunizations are current; and

(d) name of the child's physician.

(2) The facility shall maintain staff records to include:

(a) Background screening records; and

(b) In-service training records.

R430-60-8. Child Discipline.

(1) The licensee shall inform all care givers, parents or guardians and children of expected conduct by setting clear and understandable rules.

(2) Disciplinary measures shall be implemented so as to encourage the child's self-control to reduce risk of injury and any adverse health effects to self or others. Positive discipline measures include but are not limited to:

(a) positive behavioral rewards;

(b) other forms of positive guidance;

(c) redirection; or

(d) time out.

(3) Discipline measures shall not include any of the following:

(a) corporal punishment, including hitting, shaking, biting, pinching, or spanking;

(b) restraining a child's movement by binding or tying;

(c) use of abusive, demeaning or profane language;

(d) forcing or withdrawing food, rest or bathroom opportunities; or

(e) confining a child in a locked closet, room, or similar area.

R430-60-9. Care Giver to Child Ratios.

(1) The licensee must maintain minimum care giver to child ratios as provided in Table 1.

TABLE 1
Minimum Care giver to Child Ratios

Care giver	Children	Limits for Mixed Ages
1	12	No children under age 2
1	8	3 children under age 2
1	6	4 children under age 2

(2) Regardless of the number of other children and the minimum ratios in Table 1, if only two care givers are present, the facility may not care for more than four children under the age of two.

(3) For no more than 20 minutes, the minimum ratios in Table 1 may not exceed one care giver to 16 children if none of the children are younger than 24 months old, to allow for an additional care giver to arrive at the program.

(4) An hourly program that exceeds the ratio in Table 1, must be able to document having care givers, who, as a condition of their employment, are on call to come to the program as needed and arrive at the program within 20 minutes after receiving notification to report.

(5) Whenever the total number of children present to be cared for at a hourly program is more than 20, children younger than 24 months must be cared for in an area that is physically separated from older children. All children 24 months old and older may be cared for in the same group in the same area.

(6) A child of an employee or owner age four or older will not be counted for determining care giver to child ratios.

R430-60-10. Medications.

(1) If an hourly child care provider chooses to administer medications to a child then a trained, designated care giver shall administer medications.

(2) Training for the administration of medications shall include the following:

(a) Oral over-the counter and prescription medications must be in the original or pharmacy container;

(b) have the original label;

(c) include the child's name;

(d) have child proof caps; and

(e) have instructions for administration.

(3) The parent or guardian must complete a medication release form for each child receiving medications at the facility that contains:

(a) the name of the medication;

(b) the dosage;

(c) the route of administration;

(d) the times and dates to be administered;

(e) the illness or condition being treated; and

(f) the parent or guardian signature.

(4) Medication records shall be maintained that include:

(a) the times, dates, and dosages of the medications given;

(b) the signature or initials of the care giver who administered the medication; and

(c) documentation of any errors in administration or adverse reactions.

(5) The director or designee shall report any adverse reaction to a medication or error in administration to the parent or legal guardian immediately upon recognizing the error or reaction.

(6) Medications shall be secured from access to children.

(7) Medications stored in refrigerators shall be in spill-proof packaging and shall be kept in a covered, leakproof storage container.

(8) Unused medications shall be returned to the parent or guardian. Out-of-date medications shall be promptly discarded or returned to the parent or guardian to be destroyed.

R430-60-11. Parent Notification and Child Security.

(1) The director shall establish a procedure for care givers to check who has written authorization to pick up children. Only parents or persons with written authorization from parents shall be allowed to take any child from the facility, except that verbal authorization may be used in emergency situations. The director shall ensure a sign in and sign out document for the past three months is maintained for Department review.

(2) The director shall ensure that the parents or guardians are informed of all injuries and incidents that occur during the child's stay at the program. A written report shall be provided to the parents, and notification shall occur at the time that the injury or incident occurs if medical treatment is required. At the time of admission, the director shall obtain a signed permission form from the parent or legal guardian for emergency medical treatment.

(3) For any emergency that requires a response by emergency medical treatment providers, fatality, or hospitalization of a child in care, the licensee shall:

(a) notify the Department within 24 hours of occurrence, either by phone or facsimile; and

(b) submit to the Department within five business days of occurrence a written injury and accident report.

(4) The director shall develop a policy to address how long a child may cry before the parent is contacted.

R430-60-12. Activities.

(1) The licensee shall have an array of activities and sufficient supplies at the center, which are appropriate for the age and development of the children accepted for care.

(2) There shall be a minimum of 35 square feet per child of indoor play area for each child in care under age 14.

(3) If an outdoor play area is available, the area shall have at least 40 square feet for each child using the play area at any given time for each child in care under age 14.

(4) Outdoor play areas shall be fenced or have a natural barrier that provides protection from unsafe areas. Fences shall be at least four feet high. If local ordinances conflict, the director may request a variance from the Department. Any gaps within the fence shall not be greater that three and one-half inches. The bottom edges of fence shall not be more than three and one-half inches above the ground.

R430-60-13. Fire, Sanitation, and Safety.

(1) The licensee shall have a written emergency and disaster plan in case of fire, flood, earthquake, blizzard, power failure or other disasters that could create structural damage to the facility or pose a health hazard. The director shall hold simulated fire drills monthly and semi-annual disaster drills. The director shall document all drills, including date, participants, and problems encountered.

(a) The director shall post evacuation routes which indicate the location of fire alarm boxes and fire extinguishers in prominent locations throughout the center. Each center shall have approved fire extinguishers and be inspected by the local fire authority annually.

(b) The licensee shall ensure that the telephone service is in working order, unless there is a utility failure, and inform the Department of the current phone number.

(c) The names and telephone numbers of the emergency medical personnel, fire department, police, poison control and license holder shall be posted by the telephone.

(2) A person may not smoke or use tobacco in any child care facility during the period of time a child is present in the facility. All lighters and matches shall be inaccessible to children.

(3) The director of the facility shall establish written policies and monitor the care givers to ensure that the use and accessibility to tobacco, alcohol, illegal substances or sexually explicit materials are prohibited by any person anywhere on the premises during the hours of operation when children are in care.

(4) The toilet rooms of the hourly program must be cleaned and disinfected daily.

(5) If the program accepts a child in a diaper, then the diaper shall be changed only in a designated diaper changing area. The designated area shall:

(a) have diaper changing procedures posted;

(b) be separate from food storage, food preparation, and eating areas.

(c) have a hand sink equipped with soap, hot and cold running water within three feet of the diaper-changing surface; and

(d) have a smooth nonabsorbent diaper changing surface, railing and a sanitary container for soiled and wet diapers.

(6) Care givers shall change a child's clothing when it is soiled with fecal material or urine and place the clothing into a leakproof container to be sent home with the parent or legal guardian. Clothing soiled with feces or urine shall not be rinsed at the facility.

(7) Hand washing policies shall be followed to assure protection from contamination and the spread of microorganisms. Hand washing procedures shall be posted at all hand washing sinks.

(a) Care givers shall wash and scrub their hands for 20 seconds with soap and warm running water at times specified in policy.

(b) Care givers shall teach children proper hand washing techniques and oversee hand washing whenever possible.

(c) Care givers and children shall wash their hands after using the toilet, before and after eating and before and after food preparation.

(8) The licensee shall provide the following supplies and make them accessible to children: toilet paper, liquid hand soap, facial tissues, and single use paper towels or warm air hand dryers.

(9) The director shall keep and maintain a first aid kit and a portable blood and bodily fluid clean-up kit. All care givers shall know the location of and how to use the kits.

(10) Equipment and furniture must be durable, in good repair, structurally sound, and stable following assembly and

installation.

(a) Equipment must be free of sharp edges, dangerous protrusions, openings where a child's extremities could be pinched or crushed, and openings or angles that could trap part of a child's body.

(b) Tables, chairs, and other furniture must be appropriate to the age and size of children who use them. High chairs must have safety straps.

(c) Toys and equipment that are likely to be mouthed by infants and toddlers must be made of a material that can be disinfected. These must be cleaned and disinfected when mouthed or soiled and at least daily.

(d) Sharp objects, medicines, plastic bags, and poisonous plants and chemicals, including household supplies, must be stored out of reach of children.

(e) Electrical outlets accessible to children four years of age and younger shall be protected or capped with safety devices.

(f) All pieces of outdoor playground equipment shall be surrounded by a resilient surface of loose cushioning, at least nine inches in depth, or mats manufactured for such use, consistent with the guidelines of the Consumer Product Safety Commission and the standards of the American Society for Testing and Materials. All indoor playground equipment, for example slides and climbers, shall be surrounded by cushioning materials, such as mats, in a six foot fall zone. Indoor play equipment shall not exceed three feet at the highest point.

(g) The areas used by children must be free from debris, loose flaking, peeling, or chipped paint, loose wallpaper, or crumbling plaster, litter, and holes in the walls, floors and ceilings. Rugs must have a non-skid backing or be firmly fastened to the floor and be free from tears, curled, or frayed edges, and hazardous wrinkles.

(h) Infant walkers with wheels are not permitted in hourly childcare programs.

(11) Hot water accessible to children shall not exceed the scalding standard of 120 degrees Fahrenheit.

(12) The licensee shall take effective and safe measures to prevent, control, and eliminate the presence of insects, rodents, and other vermin on the premises.

(13) There shall be adequate housekeeping services to maintain a clean and sanitary environment.

(14) Entrances, exits, steps, and outside walkways shall be maintained in a safe condition, free of ice, snow and other hazards.

(15) The center shall maintain air temperatures between 72 degrees Fahrenheit and 85 degrees Fahrenheit as measured 30 inches above the floor. Infant care areas shall maintain temperatures of at least 70 degrees Fahrenheit at floor level.

(16) If sleeping equipment or mats are provided for rest time, all mats and sleeping equipment shall be cleaned and sanitized weekly, and prior to use by another child.

(17) There shall be at least one toilet and lavatory for each 15 children. Care givers shall directly supervise children when using bathrooms that are available to the general public.

(18) There shall be no firearms or other weapons accessible to children. Firearms and other weapons shall be stored separately from ammunition and all shall be in a locked cabinet or area during times when children are on the premises, unless the use is in accordance with UCA 53-5-701 Concealed Weapons Act, UCA 76-10-523 Persons Exempt from Weapons Laws or as otherwise authorized by law.

R430-60-14. Animals.

(1) If the facility permits animals in the facility:

(a) the animals shall be clean and in good health;

(b) the animals shall be confined in enclosures, hand held, under leash control, or under voice control;

(c) the animals shall have current vaccination records available at the facility for all diseases transmissible to humans;

(d) the animals shall have no history of dangerous or aggressive behavior; and

(e) the animals shall be excluded from food preparation, storage or dining areas.

(2) Children shall not assist with the cleaning of animals, animal cages, pens or animal equipment.

(3) The director shall inform the parent or legal guardian of any known allergic or immune suppressed child of the types of animals kept at the facility.

(4) Children shall not be permitted to handle reptiles, including turtles and lizards.

R430-60-15. Food Service.

(1) If food service is provided, the center's food service shall comply with the Utah Department of Health Food Service Sanitation Regulations, R392-100, and with the local health department food service regulations.

(2) If the local health department completes an inspection, the most recent inspection report shall be maintained at the center for review by the Department.

(3) All food served in the center by care givers for the children in care shall be from an approved source as provided in R392-100.

(a) Food brought in by parents for service to other children must be from an approved source or commercially prepared;

(b) Food brought in by parents for individual child use must be labeled with the child's name.

(4) All care givers who prepare or serve food and snacks must have a food handler's permit.

(5) Children's food shall be served on plates, napkins or other sanitary holders, which includes a high chair tray. Multiple use sanitary holders shall be washed, rinsed, and sanitized with a sanitizer approved in R392-100 for food contact surfaces prior to each use. Food shall not be placed on a bare table or other eating surface.

(6) If a food service is provided, care givers shall serve meals and snacks according to the center policy, but at least once every three hours.

(7) Children and infants shall be served special diets, formula, breast milk, or food supplements in accordance with the written instructions from a parent or legal guardian.

(8) Baby food must be refrigerated after opening, marked with the date and time and discarded if not consumed within 24 hours.

(9) Infant formula and breast milk shall be discarded after feeding or within two hours of initiating a feeding.

(10) If an infant is unable to sit upright and hold his own bottle, a care giver shall hold the infant during bottle feeding.

R430-60-16. Penalty.

The Department may impose civil monetary penalties in accordance with Title 63, Chapter 46b, Administrative Procedures Act and Section 26-39-108, if there has been a failure to comply with the provisions of this chapter, or rules promulgated pursuant to this chapter, as follows:

(1) if significant problems exist that are likely to lead to the harm of a child, the department may impose a civil money penalty of $50 to $1,000 per day; and

(2) if significant problems exist that result in actual harm to a child, the department may impose a civil money penalty of $1,050 to $5,000 per day.

KEY: child care facilities
February 15, 2002 26-39

R430. Health, Health Systems Improvement, Child Care Licensing.
R430-90. Licensed Family Child Care.
R430-90-1. Legal Authority.

This rule is promulgated pursuant to Title 26, Chapter 39.

R430-90-2. Purpose.

The purpose of this rule is to establish standards for the operation and maintenance of licensed family child care providers who care for one to 16 children in their home. It establishes minimum requirements for the health and safety of children in licensed programs.

R430-90-3. Definitions.

(1) "Conditional enrollment" means that a child is admitted to a child care program and has received at least one dose of each required vaccine prior to enrollment and maintains a schedule for subsequent required vaccinations.

(2) "Supervision" means the function of observing, overseeing, and guiding a child or group of children.

(3) "Related children" means children whose child care is provided by their parents, legal guardians, grandparents, brothers, sisters, uncles or aunts.

(4) "Infant" means a child younger than 13 months of age.

(5) "Toddler" means a child 13 months and older, but less than 25 months of age.

R430-90-4. License Required.

(1) A person who provides child care in a home for nine to 16 children unrelated to the licensee for less than 24 hours a day, with a regularly scheduled, on-going enrollment, for direct or in-direct compensation must be licensed as a family group child care program.

(2) A person who provides child care in a home for less than nine unrelated children for less than 24 hours per day, having a regularly scheduled, ongoing enrollment, for direct or indirect compensation may be licensed as a family child care program.

R430-90-5. Licensee Qualifications and Duties.

(1) The licensee of the child care program must:

(a) be at least 18 years of age; or

(b) have a high school diploma or G.E.D.; and

(c) have knowledge of and comply with applicable laws and rules.

(2) The licensee shall establish and implement policies and procedures for the health and safety of children in the home.

(3) The care giver shall be physically present on-site and provide care and supervision of children at all times, both indoors and outdoors. This includes:

(a) awareness of and responsibility for the ongoing activity of each child and being near enough to intervene if needed; and

(b) frequent in person observation of children sleeping in cribs and play pens.

(4) The licensee may permit a child to participate in supervised out of the home activities without the care giver if:

(a) the care giver has prior written permission from the child's parent for the child's participation; and

(b) the licensee has clearly assigned the responsibility for the child's whereabouts and supervision throughout the period of care.

(5) The licensee may make arrangements for a substitute who is at least 18 years old and who is capable of providing care and supervision of children and handling emergencies in the absence of the care giver.

R430-90-6. Care Giver Qualifications.

(1) The licensee shall ensure that each care giver or volunteer who has direct contact with or access to children is oriented to the licensed program and successfully completes the required orientation training before starting assigned duties. The licensee shall document in a care giver's personnel record the date of completion of orientation training. The orientation training must include:

(a) procedures for maintaining health and safety and handling emergencies and accidents;

(b) specific job responsibilities;

(c) child discipline procedures of R430-90-7;

(d) reporting requirements if the care giver witnesses or suspects child abuse, neglect or exploitation; and

(e) procedures for releasing children to authorized individuals.

(2) All care givers who provide services shall be at least 18 years of age or have completed high school or a G.E.D.

(3) There shall be at least one care giver at the home during business hours who has a current course completion in basic child and infant first-aid and Cardiac Pulmonary Resuscitation (CPR), and training in the Heimlich Maneuver for treatment of an obstructed airway.

(a) First-aid and CPR refers to courses given by the American Red Cross, the Utah Emergency Medical Training Council, or other courses that the licensee of the program can demonstrate to the Department to be equivalent.

(b) Documentation of the completed First-Aid and CPR training must be in the care giver's personnel record.

(4) The licensee must ensure that an annual documented in-service training plan is developed and carried out. The plan shall be pertinent to the ages of the children in the program and must address the following areas:

(a) proper hand washing and sanitation techniques;

(b) principles of good nutrition;

(c) proper procedures in administration and storage of medications;

(d) recognizing early signs of illness, communicable diseases and determining if there is a need to exclude a child from the program;

(e) accident prevention and safety principles;

(f) positive guidance for the management of children;

(g) child development; and

(h) age appropriate activities.

(5) If child care is provided to children under age two, the following in-service topics are also required:

(a) Preventing Shaken Baby Syndrome;

(b) Coping with crying babies; and

(c) Preventing Sudden Infant Death Syndrome.

(6) The licensee shall ensure that they and all care givers complete a minimum of 20 hours of annual in-service training. At least ten hours of in-service training shall be person-to-

person instruction.

(7) The licensee shall document successful completion of in-service training and maintain a record for themselves and each care giver which includes:

(a) the date training was completed;

(b) the topics covered; and

(c) the trainer's name and organizational affiliation.

(8) Each care giver upon employment and each licensee shall have an initial health evaluation within the past six months and complete tuberculosis testing using the Mantoux tuberculin skin test method within two weeks of assuming care giver responsibilities. Tuberculin skin testing does not need to be repeated during the employment period unless the employee develops signs and symptoms of the disease, as determined by a health care professional.

(a) All care givers with skin tests that indicate potential exposure to tuberculosis shall receive a medical evaluation for tuberculosis disease.

(b) All care givers who have documentation of previous positive reaction to the Mantoux tuberculin skin test shall present documentation of completion of therapy for tuberculosis infection or evidence of a negative chest radiograph within the past 12 months.

(c) Repeated chest radiographs are not required unless the care giver develops signs and symptoms of tuberculosis disease, as determined by a health care professional.

R430-90-7. Child Discipline.

(1) The licensee shall inform all care givers, parents or guardians and children of expected conduct by setting clear and understandable rules.

(2) Disciplinary measures shall be implemented so as to encourage the child's self-control to reduce risk of injury and any adverse health effects to self or others. Positive discipline measures include but are not limited to:

(a) rewards for positive behavior;

(b) other forms of positive guidance;

(c) redirection; or

(d) time out.

(3) Discipline measures shall not include any of the following:

(a) corporal punishment, including hitting, shaking, biting, pinching, or spanking;

(b) restraint of a child's movement by binding or tying;

(c) use of abusive, demeaning or profane language;

(d) force or withdrawing food, rest or bathroom opportunities; or

(e) confining a child in a locked closet, room, or similar area.

R430-90-8. Records.

(1) The licensee shall obtain from the parent or legal guardian an admission agreement, which identifies the following:

(a) child's full name and nickname;

(b) parent or guardian's name, address and phone number;

(c) name, address and phone number of additional persons to be notified in the event of an emergency when the parent or guardian cannot be located;

(d) name, address and phone number of the child's primary source of emergency health and dental care.

(2) The licensee shall ensure that children's records are organized and maintained to include the following:

(a) immunization record (Utah School Immunization Record -USIR) according to R396-100;

(b) child's health history required in R430-90-10(4) and any updates;

(c) injury, accident and incident reports; and

(d) medication administration records required in R430-90-10(6)(d).

(3) The licensee of the program shall maintain care giver records to include:

(a) background screening records;

(b) initial health evaluations and TB testing;

(c) food handler's permits;

(d) first-aid and CPR course completion; and

(e) in-service training records.

(4) The licensee shall ensure a record or log is maintained to document each enrolled child's attendance.

R430-90-9. Care Giver to Child Ratios.

The minimum ratio of care givers to children permitted in licensed small family and family group child care are set forth in tables 1 and 2.

TABLE 1
Family Minimum Care Giver to Child Ratios

Care giver	Children	Limits for Mixed Ages(a)
1	8	No more than two children under age 2
1	6	No more than three children under age 2

(a) The mixed ages include the care giver's children under age 4.

TABLE 2
Family Group Minimum Care giver to Child Ratios

Care Giver	Children	Limits for Ages	Group Size(b)(c)
1	12	All Children School-age	16
2	9-16	Mixed ages, only four under age 2	20

(b) There shall be at least two care givers in the licensed family group program at all times when there are nine or more children present, counting the care givers' own children, grand children, nieces, nephews, wards, step-children, under age 12, or when more than two infants are present.

(c) The care giver's own children, grand children, nieces, nephews, wards, step-children are included in the maximum group size if they are under the age of 12.

R430-90-10. Child Health and Medications.

(1) The licensee may not care for a child without proof of immunization, or evidence of conditional enrollment, or evidence of personal, medical or religious exemption. Each child shall have immunizations as required by the Utah School Immunization Law, R396-100.

(2) The licensee shall observe each child daily for signs of illness.

(a) The licensee shall notify the parent or legal guardian

immediately when illness is observed or suspected.

(b) The licensee must keep ill children separate from other children.

(3) If a communicable illness or parasite is discovered, the owner shall notify the parent or legal guardian of all enrolled children on the day of discovery. Notification shall protect the confidentiality of care givers and children.

(4) The parent or legal guardian shall provide a child health history upon admission which identifies:

(a) known food sensitivities and allergies;

(b) chronic illnesses, disabilities or medical conditions;

(c) instructions for routine care; and

(d) instructions for emergency care.

(5) The parent or legal guardian shall annually review and update the child's health history with the licensee.

(6) If the licensee chooses to administer prescribed or oral over-the-counter medications then:

(a) Medications may be administered to children only by a designated care giver who does the following:

(i) check the label and confirm the name of the child,

(ii) read the directions regarding measured doses, frequency, expiration date, and other administration guidelines, and

(iii) properly document administration of medication records according to subsection (d).

(b) Oral over-the-counter and all prescription medications must be in the original or pharmacy container, have the original label, include the child's name, have child proof caps, and have written instructions for administration.

(c) The parent or legal guardian must complete a medication release form for each child receiving medications that contains:

(i) the name of the medication,

(ii) the dosage,

(iii) the route of administration,

(iv) the times and dates to be administered,

(v) the illness or condition being treated, and

(vi) the parent's or legal guardian's signature.

(d) The care giver who administers a child's medication shall maintain a medication record that includes:

(i) the time, date, and dosage of the medication given;

(ii) the signature or initials of the care giver who administered the medication; and

(iii) documentation of any errors in administration or adverse reactions.

(e) The licensee shall report any adverse reaction to a medication or error in administration to the parent or legal guardian immediately upon recognizing the error or reaction.

(f) Medications shall be secured from access to children.

(g) Medications stored in refrigerators shall be in spill-proof packaging and shall be kept in a covered, leakproof storage container.

(h) The licensee shall return all unused or out-of-date prescription and oral over-the-counter medications to the parent or legal guardian.

R430-90-11. Parent Notification and Child Security.

(1) The licensee shall establish a procedure for care givers to check who has written authorization to pick up children. Only the parents, legal guardian, or persons with written authorization from a parent or legal guardian shall be allowed to take any child from the home, except that verbal authorization may be used in emergency situations.

(2) The home of the licensee shall be accessible and open to parents or legal guardians during the hours of operation.

(3) The licensee shall establish a procedure for ensuring that all children's attendance is accounted for, which shall include requiring a sign-in and out procedure.

(4) The licensee shall establish written policies and monitor care givers, visitors, and residents of the home to ensure that the use and accessibility of tobacco, alcohol, illegal substances or sexually explicit materials are prohibited by any person anywhere on the premises during the hours of operation when children are under care.

(5) In the case of a serious injury to a child which requires immediate hospital treatment, the licensee shall contact the parents or legal guardians after emergency personnel have been contacted.

(6) For any emergency that requires a response by emergency medical treatment providers, fatality, or hospitalization of a child in care, the licensee shall:

(a) notify the Department within 24 hours of occurrence, either by phone or facsimile; and

(b) submit to the Department within five business days of occurrence a written injury and accident report.

R430-90-12. Activities.

(1) The licensee shall develop a daily activity plan that is designed for the age and development of the children accepted for care and ensure that there are sufficient supplies on hand.

(2) There shall be a minimum of 35 square feet of indoor play area per child for each child in care under age 14. Toilet rooms, closets, hallways, and alcoves may not be included in calculating indoor play space. Play space does not include areas in the care giver home which are not included in the child care area.

(3) Outdoor play areas shall have at least 40 square feet per child for each child in care under age 14. The total outdoor play area shall accommodate at least 40 percent of the licensed capacity at one time.

(a) Outdoor play areas shall be fenced or have a natural barrier that provides protection from unsafe areas. Fences shall be at least four feet high. If local ordinances conflict with this requirement, the licensee may request a variance from the Department. Any gaps within the fence shall not be greater than three and one-half inches. The bottom edges of the fence shall not be more than three and one-half inches above the ground.

(b) Outdoor play areas shall have a shaded area to protect children from excessive sun and heat. Drinking water shall be continuously accessible to children in the outdoor play area.

(4) If off-site activities are provided, parent or legal guardian permission is required for children to participate. Care givers shall take with them emergency phone numbers for each child attending the activity.

(5) If swimming activities are planned, care givers shall accompany children at pool side and lifeguards and pool personnel are not counted in care giver ratios.

(6) If care is provided to infants, a care giver shall provide

physical and verbal stimulation every 30 minutes to each infant during waking hours, including the opportunity for physical activity. Physical activity may not confine an awake child to a single device, such as infant equipment which restricts active movements for more than 30 minutes.

R430-90-13. Transportation.

(1) The licensee shall maintain documentation that any vehicle used for transporting children has a current vehicle registration, insurance for child care transportation, safety inspection and shall maintain the vehicle in a clean and safe manner.

(2) Each vehicle shall:

(a) have a first-aid kit and body fluid clean-up kit;

(b) be equipped with individual, size-appropriate safety restraints such as car seats or seat belts which are described in the federal motor vehicle safety standards contained in the Code of Federal Regulations, title 49, section 571.213, for each child that are appropriate to the vehicle type and are installed and used in the manner prescribed by the manufacturer;

(c) be enclosed; and

(d) be locked during transport.

(3) Smoking in vehicles is prohibited at all times that children are in the vehicle.

(4) Any vehicle used for transporting children shall be driven by an adult who holds a current state driver's license that authorizes the driver to operate the type of vehicle driven.

(5) The driver shall ensure that no child is unattended in the vehicle. The driver shall remove the keys whenever the driver is not in the driver's seat.

R430-90-14. Infection Control.

(1) All care givers shall comply with the universal blood and bodily fluid precautions according to the OSHA Bodily Fluid Blood-Borne Pathogen Standard.

(a) The licensee shall keep and maintain a portable blood and bodily fluid clean-up kit.

(b) All care givers shall know the location of the kit and how to use it.

(c) All care givers shall wear new disposable latex gloves or an approved equivalent listed in OSHA part 1910.1030 for first-aid procedures involving blood or clean-up of blood containing bodily fluids.

(2) If children are admitted for care who require diapers, the following applies:

(a) Care givers shall change a child's diaper on a clean, smooth, washable, non-absorbent diapering surface and sanitize the surface after each use.

(b) The diapering area shall not be located in a food preparation area.

(c) Care givers shall place soiled diapers in a container that is lined and has a tight fitting lid or take the diapers directly to an outside covered receptacle. Care givers shall clean and disinfect the inside diaper containers daily.

(3) If a child's clothing is soiled by fecal material or urine, a care giver shall change the clothing promptly and place the clothing in a leakproof container to be sent home with the parent or legal guardian.

(4) If personal hygiene items for children are maintained at the home such as combs or toothbrushes, they shall not be shared between children and shall be labeled and stored separately.

(5) The licensee shall clean and sanitize indoor activity equipment and toys weekly or more often as necessary.

(a) Stuffed animals shall be machine washable.

(b) If four or more infants are present for care, the licensee shall clean and sanitize the indoor equipment and toys used by the infants during the day.

(6) Care givers shall assure protection from contamination and the spread of microorganisms by implementing good hand washing practices. Care givers shall teach children proper hand washing techniques and oversee hand washing whenever possible. Care givers and children shall wash their hands after using the toilet, before and after eating, and before and after food preparation.

(7) Single-use paper towels or individually labeled cloth towels shall be used for drying hands. If cloth towels are used, the care giver shall wash the towels daily.

R430-90-15. Safety.

(1) Indoor and outdoor play spaces, toys and equipment shall be maintained in a safe manner to prevent injury to children.

(2) Infants and toddlers shall not have access to toys smaller than 1-1/4 inches in total diameter or length. Toys and equipment used by children must comply with the guidelines of the Consumer Product Safety Commission.

(3) High chairs shall have safety straps or devices to prevent children from falling out.

(4) There shall be no firearms or other weapons accessible to children. Firearms and other weapons shall be stored separately from ammunition and all shall be in a locked cabinet or area during times when children are on the premises, unless the use is in accordance with UCA 53-5-701 Concealed Weapons Act, UCA 76-10-523 Persons Exempt from Weapons Laws or as otherwise authorized by law.

(5) Electrical outlets accessible to children four years of age and younger shall be protected or capped with safety devices.

(6) Toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials shall be stored away from children in a locked or protected area. All toxic or hazardous chemicals shall be in the original container, or labeled in the container.

(7) Fireplaces, open-face heaters, and wood burning stoves shall be inaccessible to children when in use. Portable space heaters are not permitted when children are on the premises.

(8) Outdoor play equipment shall be located over soft material or grass.

(9) All water hazards such as a swimming pool, stationary wading pool, ditches, and fish ponds shall be fenced to prevent access by children.

(10) Sharp objects, medicines, plastic bags, poisonous plants, lighters and matches must be stored out of reach and inaccessible to children.

(11) Hot water accessible to children shall not exceed the scalding standard of 120 degrees Fahrenheit.

(12) Strings and cords long enough to encircle a child's

neck, such as those found on pull toys, window blinds, or drapery cords, shall be inaccessible to children under five years of age.

(13) Any structure built prior to 1978 which has peeling, flaking, chalking, or failing paint on the interior or exterior shall be tested for lead-based paint. If paint lead levels are equal to or exceed 0.06% by weight, the structure must be remodeled by encapsulation or enclosure when possible or by complete removal of lead-based paint by trained individuals.

(14) Infant walkers with wheels are not permitted.

(15) The licensee shall provide separate sleep equipment for each infant designed for infant use, such as a crib, bassinet, porta-crib, or play pen. Infants shall be placed on their backs for sleeping.

R430-90-16. Fire, Emergency, and Disaster.

(1) The licensee shall have a written emergency and disaster plan in case of fire, flood, earthquake, blizzard, power failure, or other disasters that could create structural damage to the home or pose a health hazard. The plan shall include the procedure to transport and evacuate children to another location and the procedures to turn off gas, electricity and water.

(2) The licensee shall have an emergency plan in the case of a missing child or death or serious injury to a child, which includes the name of a substitute care giver in the event the owner must leave the residence for any reason.

(3) The licensee shall hold simulated fire drills quarterly and an annual disaster drill. The licensee shall document the date of drills, participants, and the problems encountered.

(4) Each home shall have fire extinguishers and smoke detectors in good operating condition on each floor occupied by children. Two exits leading to an open space at ground level, shall be present to permit the orderly evacuation of children. If the basement is used to provide child care, at least one exit at ground level shall be present leading to an open space.

(5) The licensee shall ensure that the telephone service is in working order, unless there is a utility failure, and inform the Department of the current phone number. The names and telephone numbers of the emergency medical personnel, fire department, police, and poison control shall be posted by the telephone.

(6) The licensee shall maintain a first-aid kit at the residence.

R430-90-17. Housekeeping and Maintenance.

(1) The licensee shall take effective and safe measures to prevent, control, and eliminate the presence of insects, rodents, and other vermin on the premises.

(2) There shall be adequate housekeeping services to maintain a clean, odor free, and sanitary environment.

(3) Entrances, exits, steps, and outside walkways shall be maintained in a safe condition, free of ice, snow, and other hazards.

(4) The licensee shall maintain the home at air temperatures between 72 degrees Fahrenheit and 85 degrees Fahrenheit as measured 30 inches above the floor. Infant care areas shall maintain temperatures of at least 70 degrees Fahrenheit at floor level.

(5) If sleeping equipment or mats for sleeping are provided, all mats and sleeping equipment shall be cleaned and sanitized weekly, and prior to use by another child.

(6) The home shall be maintained to ensure that the equipment, fixtures, and furnishings are safe and in good repair.

(7) Sand boxes and outdoor play areas shall be kept free of animal excrement and harmful objects.

R430-90-18. Animals.

(1) If the licensee permits animals at the home:

(a) the animals shall be clean and in good health;

(b) the animals shall have current vaccination records available at the program for all diseases transmissible to humans; and

(c) the animals shall have no history of dangerous or aggressive behavior.

(2) Children shall not assist with the cleaning of animals, animal cages, pens or animal equipment. Animal cages and equipment shall not be cleaned in food preparation or food storage areas.

(3) The licensee of the program shall inform the parent or legal guardian of the types of animals kept at the home.

(4) Children shall not handle reptiles, including turtles and lizards.

R430-90-19. Food Service.

(1) If the local health department completes an inspection, the inspection report shall be maintained at the home for review by the Department.

(2) Food prepared by the care givers for the children in care shall be from an approved source as provided in R392-100.

(a) Food brought in by parents or legal guardians to serve to other children must be from an approved source or commercially prepared;

(b) Food brought in by parents or legal guardians for individual child use must be labeled.

(c) Baby food must be refrigerated after opening, marked with the date and time of opening and discarded if not consumed within 24 hours of opening;

(d) Infant formula and breast milk shall be discarded after feeding or within two hours of initiating a feeding.

(3) All care givers who prepare or serve food and snacks must have a current food handler's permit.

(4) Children's food shall be served on plates, napkins or other sanitary holders, which include a high chair tray. Multiple-use sanitary holders shall be washed, rinsed, and sanitized with a sanitizer approved in R392-100 for food contact surfaces prior to each use. Food shall not be placed on a bare table or other eating surface.

(5) Meals and snacks shall be served at least once every three hours, or according to the menu.

(a) The current week's menu shall be posted for review by parents or guardians and all substitutions shall be noted on the menu and retained for one week. If substitutions are made, the menu must meet the requirement of the United States Department of Agriculture (USDA) Child Care Food Program guidelines;

(b) Menus can be obtained from the Department or shall be Department-approved, independently approved and signed by a registered dietitian, or approved through the United States

Department of Agriculture Child and Adult Care Food Program; and

(c) A different menu shall be planned for each day of the week and menus may be cycled.

(6) Children and infants shall be served special diets, formula, breast milk, or food supplements in accordance with the written instructions from a parent or legal guardian.

(7) If an infant is unable to sit upright and hold his own bottle, a care giver shall hold the infant during bottle feeding.

R430-90-20. Penalty.

The Department may impose civil monetary penalties in accordance with Title 63, Chapter 46b, Administrative Procedures Act and Section 26-39-108, if there has been a failure to comply with the provisions of this chapter, or rules promulgated pursuant to this chapter, as follows:

(1) if significant problems exist that are likely to lead to the harm of a child, the department may impose a civil money penalty of $50 to $1,000 per day; and

(2) if significant problems exist that result in actual harm to a child, the department may impose a civil money penalty of $1,050 to $5,000 per day.

KEY: child care facilities
February 15, 2002 26-39

R430. Health, Health Systems Improvement, Child Care Licensing.
R430-100. Child Care Center.
R430-100-1. Legal Authority.

This rule is promulgated pursuant to Title 26, Chapter 39.

R430-100-2. Purpose.

The purpose of this rule is to establish standards for the operation and maintenance of a child care center. This rule provides minimum requirements to ensure health and safety for children in child care centers.

R430-100-3. Definitions.

(1) "Accessible" means records are available for Department review within 10 days.

(2) "Direct supervision" means that the care giver can see and hear the children under age six, and is near enough to intervene when needed. Care givers must be able to hear school-age children and be near enough to intervene.

(3) "Conditional enrollment" means that a child is admitted to a child care program and has received at least one dose of each required vaccine prior to enrollment and is on a schedule for subsequent vaccinations.

(4) "Group" means a number of children assigned to one or two care givers, occupying an individual classroom or an area segregated by furniture or other structure within a large room.

(5) "Immediately Accessible Records" means information contained within the client children's and staff members files, currently enrolled or employed, which shall be made available for Department review on-site or within a 24 hour period.

(6) "Infant" means any child 12 months of age and younger.

(7) "Toddler" means a child 13 to 24 months.

R430-100-4. License Required.

A person who provides child care in a place other than the person's home for five or more children for less than 24 hours per day, having a regularly scheduled, ongoing enrollment, for direct or indirect compensation must be licensed as a child care center program.

R430-100-5. General Variance Provisions.

(1) The Department may grant a variance to an individual rule when:

(a) A requirement does not apply to the center program; or

(b) The center program can satisfy the intent of the rule by other methods.

(2) The owner or director shall request a variance to a rule on a form provided by the Department. The request shall include:

(a) A justification for the requested variance; and

(b) An explanation of how the center program will satisfy the intent of the rule.

(3) The Department may not grant a variance to the rule:

(a) If the requirement is established by Title 26, Chapter 39; or other statute; or

(b) Unless the health, safety and well being of the children are ensured.

(4) The granting of a variance to a rule does not set a precedent, and the Department shall evaluate each request on its own merits.

(5) The time period for granting a variance shall be specified in the letter from the Department and shall be kept on site by the licensee.

R430-100-6. Administration and Organization.

(1) The licensee shall exercise supervision over the affairs of the facility and establish policies to comply with this rule.

(2) Duties and responsibilities of the licensee include the following:

(a) Compliance with federal, state, and local laws and for the overall organization, management, operation, and control of the facility;

(b) Establishment of written policies and procedures for the health and safety of children in the facility shall be available for review by parents and staff. The Department shall provide templates for all required policies and procedures and if the licensee elects to use the approved templates the rule is considered met. The policies and procedures shall address at least each of the following areas:

(i) training and education levels of care giver positions;

(ii) exclusion of care givers and children with infectious and communicable diseases;

(iii) supervision and protection of children when they are sleeping, using the bathroom, in a special mixed group activity, on the playground, and during off-site activities;

(iv) releasing children to authorized individuals;

(v) administration and storage of medications;

(vi) discipline of children;

(vii) transportation to and from school and to and from off-site activities;

(viii) emergency and disaster plans;

(ix) the use and presence of tobacco, alcohol, illegal substances and sexually explicit material; and

(x) hand washing

(xi) firearms; and

(xii) food service.

(c) Appoint, in writing, a qualified director who shall assume responsibility for the day-to-day operation and management of the facility.

(d) Keep the Department informed of the current center phone number.

(3) The director or designee of a child care center shall have sufficient freedom from other responsibilities to manage the facility and shall be on the premises during operating hours.

(4) The director of the child care center shall have the following qualifications:

(a) Be at least 21 years of age;

(b) Have knowledge of applicable laws and rules; and

(c) Except for directors of child care centers who are listed as director on a child care license before January 1, 1998, the child care center director must have a high school diploma or GED equivalent and one of the following:

(i) A bachelor's or associate's degree in Early Childhood or Child Development, or a bachelor's degree in a related field and proof of passing four higher education courses in child development; or

(ii) A national or state certification such as a Certified

Childcare Professional (CCP), National Administrator Credential, Child Development Associate (CDA), or other credential that the licensee demonstrates to the Department as equivalent.

(5) Duties and responsibilities of the director, or the owner if the duties and responsibilities have not been delegated to the director, include the following:

(a) Designate, in writing, a competent care giver who is at least 21 years of age to act as director in his temporary absence;

(b) Recruit, employ, and train staff to meet the needs of the children;

(c) On the day of discovery, notify the local health department of any reportable communicable diseases among children or care givers, and any sudden or extraordinary occurrence of serious or unusual illness in accordance with Section R386-702-2; and

(d) Conduct regular inspections of the facility to ensure it is safe from potential hazards to children.

(6) The director, or the owner if the duties and responsibilities have not been delegated to the director, shall establish and enforce policies to ensure that the following are prohibited anywhere on the premises during the hours of operation:

(a) the use of tobacco;

(b) the use of alcohol;

(c) the use or possession of illegal substances; and

(d) the use or possession of sexually explicit material.

R430-100-7. Personnel.

(1) The director shall ensure that adequate direct supervision is maintained whenever the center is operating. The care giver-to-child ratios established in R430-100-9 are minimum requirements only. The director shall ensure that policies exist to adjust these ratios when the age and the number of children require additional care givers to maintain adequate levels of supervision and care.

(2) The director shall train all care givers to be able to service the needs of the children in their care, and organize staff efforts to achieve that end.

(3) All care givers who provide direct services in a child care center shall be at least 18 years of age or have completed high school or a GED. In addition to the required staff ratios, child care services may be provided by an individual who is 16 years old, if he works under the direct supervision of a care giver at least 18 years old, who has completed 20 hours of in-service training and meets all licensing requirements.

(a) All care givers shall have access to and have read and documented their understanding of the facility's policies and procedures;

(b) Each new care giver shall receive orientation training prior to being left unsupervised with children. Training shall be documented to show topic, date of completion, and the first date of working unsupervised with the children. Training shall cover the following topics:

(i) Job description;

(ii) Introduction and orientation to the children, which includes special conditions, e.g., allergies and medical conditions;

(iii) Procedures for releasing children to parents or guardians;

(iv) Center policies and procedures;

(v) Reporting requirements for witnessing or suspicion of abuse, neglect and exploitation, according to Section 62A-4a-403(1) and 62A-4a-411 and how to make necessary reports; and

(vi) Department Informational Guide to Parents which identifies the areas inspected annually and a contact telephone number for parents to report concerns.

(4) Each director shall ensure that all care givers are screened for tuberculosis by the Mantoux tuberculin skin test method within 30 days of assuming care giver responsibilities.

(a) If the Mantoux test is positive, the care giver will provide documentation of a negative chest radiograph.

(b) Tuberculin skin testing does not need to be repeated during the employment period unless the employee develops signs and symptoms of the disease, as determined by a health care professional.

(5) All care givers shall receive a minimum of 20 hours of documented in-service training annually. At least 10 hours of the in-service training shall be in person. The training shall include the following:

(a) Principles of good nutrition;

(b) Proper hand washing, OSHA requirements and sanitation techniques;

(c) Proper procedures in administration of medications;

(d) Recognizing early signs of illness and determining when there is a need for exclusion from the facility;

(e) Accident prevention and safety principles;

(f) Reporting requirements for communicable and infectious diseases;

(g) Reporting requirements for abuse, neglect and exploitation according to Section 62A-4a-403(1) and 62A-4a-411; and

(h) Positive guidance for the management of children.

(6) If the center provides infant care, the following in-service training is required as part of the required in-service hours:

(a) Preventing Shaken Baby Syndrome;

(b) Preventing Sudden Infant Death Syndrome;

(c) Coping with crying babies; and

(d) Development of the brain.

R430-100-8. Records.

(1) Records shall be appropriately stored and protected against access by unauthorized individuals.

(a) Care givers shall not disclose or discuss personal information regarding children and their relatives with any unauthorized person.

(b) Confidential information shall only be seen and discussed with care givers who need the information to provide services.

(c) The director shall obtain written permission from parents or legal guardians before sharing information except as provided in paragraph a and b above.

(2) The licensee and director shall maintain the following written records and the records shall be immediately accessible except for those records designated to be on-site,

(a) Policies and procedures shall be on-site;

(b) Records for each enrolled child shall be available on-

site and include the following:

(i) Utah School Immunization record;

(ii) Transportation and medical treatment releases;

(iii) An admission agreement that includes the child's name, date of birth; date of enrollment; the parent or guardian's name, address and phone number; the name, address, and phone number of a person to be notified in the event of an emergency when the parent or guardian cannot be located; and the names of people authorized to pick up the child; and

(iv) Current medication administration release form.

(c) Records for each enrolled child which shall be available within 24 hours include the following:

(i) A six week child attendance record;

(ii) A six week record of injuries, incident and accident reports; and

(iii) A six week record of medications administered.

(d) Personnel records for each currently employed care giver and staff, which shall be available on-site include:

(i) Employment application with emergency contact information; and

(ii) Food Handler's permit for care givers who prepare or serve meals or snacks, obtained within 30 days of hire.

(e) Personnel records for each currently employed care giver and staff which shall be available within 24 hours shall include the following:

(i) Date of employment;

(ii) Initial health evaluation form;

(iii) Criminal Background Screening initial clearance form or the waiver for annual renewal;

(iv) A six week record of hours worked for current care givers and staff;

(v) Results of TB screening, obtained within 30 days of hire;

(vi) Documented in-service training hours;

(vii) Documentation of orientation training completion; and

(viii) First Aid and CPR course completion.

(f) All variance requests granted by the Department;

(g) A log of the results of the past 12 months fire and disaster drills shall be on-site;

(h) A current Local Health Department Inspection shall be on-site;

(i) A current Local fire inspection shall be on-site; and

(j) Required current animal vaccination records shall be on-site.

(3) The following records shall be accessible for Department review:

(a) Personnel files of terminated employees;

(b) Records for disenrolled children; and

(c) Director qualifications.

(4) Custodial parents and legal guardians shall have access to the records on their own children.

(5) Closed records of employees and disenrolled children shall be retained for one year.

R430-100-9. Care Giver to Child Ratio.

(1) The licensee must maintain minimum care giver to child ratios as provided in Tables 1 and 2.

TABLE 1
Minimum Care Giver to Child Ratios

Staff	Number of Children	Group Size	Ages
1	4	8	0 to 12 months
1	4	8	13 to 24 months
1	7	14	2 year old
1	12	24	3 year old
1	15	30	4 year old
1	20	35	5 years and over

(2) There shall be at least two care givers at the center at all times when there are more than six children present or more than two infants present;

(3) Centers may maintain mixed age groups, and shall comply with Table 2 requirements and the following ratio requirements:

(a) Ratios and group size for mixed age groups shall be determined by averaging the ratios of the ages represented in the group;

(b) The ratio for the youngest children shall be utilized if more than half of the group is composed of children in the youngest age group.

TABLE 2
Minimum Care Giver to Child Ratios - Mixed Age Groups

Ages	Ratio	Group Size
Two Ages Mixed		
Infant and Toddlers	1:4	8
Toddlers and two year olds	1:5	10
Two and three year olds	1:9	18
Three and four year olds	1:14	25
Four years and older	1:18	25
Three Ages Mixed		
Toddlers, two and three year olds	1:7	14
Two, three and four year olds	1:11	22
Three, four and school age	1:16	25
Four Ages Mixed		
Toddlers, two, three and four year olds	1:9	18
Two, three, four and school age	1:13	25

(4) During nap time the child ratio may double for not more than two hours for children 24 months and older, if the children are in a restful or non-activity state and, if a means of communication is maintained with another care giver who is also on-site.

(5) A child of an employee or owner age four or older will not be counted for determining care giver to child ratios.

(6) If child to care giver ratios are maintained an exception is granted to group size requirements when a center program has a planned activity and during transition times not to exceed two hours daily.

(7) A variance may be requested as required by R430-100-5 for programs who were licensed prior to July 1997.

R430-100-10. Child Health.

(1) Children admitted to the center shall have immunizations as required by the Utah School Immunization Law, Utah Code Section 53A-11-301. The director may not admit a child without proof of immunization, or evidence of conditional enrollment, or evidence of a personal, medical or religious exemption.

(a) The director shall have a current Utah School Immunization Record (USIR -Pink card) on file for each child.

(b) The director shall submit the Child Care Facilities Annual Summary Report to the Department of Health Immunization Program by November 30 of each year.

(2) The care givers shall not care for ill children except when the child shows signs of illness after arrival.

(a) The director shall ensure that children who develop signs of illness at the center are kept separate from other children.

(b) The director shall contact the parents of ill children and request that they be removed immediately from the center.

(c) The director shall inform parents in writing of communicable illnesses or parasites that are discovered at the center the same day the illness or parasite is discovered.

(d) The care giver shall convey information of illnesses in a manner that protects the confidentiality of care givers and children.

(3) The director shall require the parent or guardian to complete and sign a health assessment for each child in care. This form must be obtained upon enrollment of the child and be reviewed with the parent or guardian annually. The annual review shall be signed or initialed on the day of the review. The Health Assessment shall include the following:

(a) allergies and food sensitivities;

(b) chronic illnesses;

(c) medical conditions;

(d) disabilities;

(e) date of last physical examination;

(f) instructions for routine daily care;

(g) current medications; and

(h) instructions for emergency care.

R430-100-11. Parent Notification/Child Security.

(1) The Director shall distribute to parents and post a copy of the Department Informational Guide for Parents.

(2) The center shall be open to parents and guardians of enrolled children at all times during business hours.

(3) The director shall establish a procedure for ensuring that each child's attendance is accounted for which shall include:

(a) Persons bringing or picking up a child who is not school aged shall sign the child in and out of the center,

(i) The time of day shall be recorded on the sign-in and sign-out form, and

(ii) Personal identifiers, such as a signature, initials or electronic identification may be used to sign in and out.

(b) Care givers may sign-in and sign-out a child who is school-aged.

(4) Only parents or persons with written authorization from parents shall be allowed to take any child from the center, except that verbal authorization may be used in emergency situations, if the identity of the person giving verbal authorization can be confirmed.

(5) The director or owner shall review reports of every injury, incident, and accident to a child and document the corrective action taken. The report shall be signed by the director, care giver involved, and the parent of the child.

(6) In the case of a life threatening injury to a child, the director shall contact emergency personnel before contacting the parents or legal guardians. If the parents or legal guardians cannot be reached, the director shall then attempt to contact the child's emergency contact person.

(7) The director shall call the Department within 24 hours to report any fatality, hospitalization or emergency medical response unless the emergency medical transport was part of a child's medical treatment plan identified by the parents and licensee. A written report shall be mailed or faxed to the Department within five days of the incident.

R430-100-12. Activities.

(1) The director and care givers shall develop and follow a daily activity plan that is designed for the age, health, safety and welfare of the children. No activity plan is required for infant or toddler groups. The toys and equipment needed to carry out the plan shall be present.

(2) The activity plan shall be posted for parent and care giver review.

(3) There shall be areas for indoor play.

(a) Indoor play areas shall have at least 35 square feet per child of usable play space for each child utilizing the play area at any specific time. The space requirement includes licensee and care giver children who are not counted in the ratios.

(b) Bathrooms, closets, lockers, staff desks, stationary storage units, hallways, corridors, alcoves, vestibules, kitchens or offices may not be included in calculating indoor play space.

(i) Play space does not include areas which are designated as a napping room

(ii) Centers licensed prior to the effective date of the rule change 2001, may request a permanent variance to this rule as required by R430-100-5. The exception or variance will be assumable if a change of ownership occurs and the license is not interrupted.

(c) All indoor playground equipment, for example slides and climbers, shall be surrounded by cushioning materials, such as mats, in a six foot fall zone. The cushioning material shall meet the standards of the American Society for Testing and Materials (ASTM), current edition for all equipment over three feet.

(d) If children between the ages of three and six have access to indoor play equipment then the maximum height of any piece of indoor playground equipment shall not exceed five and one-half feet. If children under age three have access to indoor play equipment, then the maximum height of the equipment may not exceed three feet.

(4) Daily activities shall include outdoor play if weather permits.

(5) Outdoor play areas shall:

(a) have at least 40 square feet for each child to accommodate at least 33 percent of the licensed capacity at one time;

(b) be directly adjacent to the building;

(c) be enclosed with a four foot high fence, or have a natural barrier that provides protection from unsafe areas including water hazards;

(i) gaps in the fence shall not be more than three and one half inches.

(ii) the bottom edge of the fence shall not be more than three and one-half inches above the ground.

(d) be free of animal excrement and harmful objects such as trash, broken toys and equipment with rusty or sharp edges, glass, tools and standing water;

(e) have a shaded area to protect children from excessive sun and heat; and

(f) have a source of drinking water in the play area during play time when the outside air temperature is 75 degrees or higher.

(6) Outdoor play equipment shall:

(a) be surrounded by a resilient surface of loose cushioning consistent with the guidelines of the Consumer Product Safety Commission and standards of ASTM; and

(b) have a six foot fall zone surrounding all playground equipment. For facilities licensed prior to July 1997, a variance may be requested to allow time for the licensee to replace or remodel the equipment as required by R430-100-5.

(7) Any particulate cushioning material, such as sand or gravel, within the fall zone of playground equipment shall be checked for packing due to rain or snow, and if compressed, weather permitting, shall be loosened to a depth of nine inches. If the cushioning material cannot be loosened, children shall not play on the equipment.

(8) If off-site activities are offered, care giver ratios must be maintained and:

(a) at least one of the care givers shall have a current first aid and CPR course completion;

(b) written parental consent shall be obtained for each type of activity in advance;

(c) the director shall notify the parents of any schedule changes;

(d) care givers shall take with them the emergency numbers and emergency treatment releases for each of the children in the group;

(e) children shall wear or carry with them the name and phone number of the center;

(f) children's names shall not be used on name tags;

(g) care givers shall provide a way for children to wash hands.

(9) If swimming activities are scheduled, care givers shall remain with the children during the activity. Lifeguards and pool personnel may not be counted towards care giver to child ratios.

R430-100-13. Medications.

(1) If medications are given, medications shall be administered to children only by a trained, designated care giver. A care giver who administers medication shall be trained to:

(a) check the label and confirm the name of the child,

(b) read the directions regarding measured doses, frequency, expiration date, and other administration guidelines, and

(c) properly document administration of medication records according to Subsection R430-100-13(3).

(2) The parent or guardian must complete a medication release form for each child receiving medications at the center that contains:

(a) the name of the medication;

(b) the dosage;

(c) the route of administration;

(d) the times and dates to be administered;

(e) the illness or condition being treated; and

(f) the parent or guardian signature.

(3) Medication records shall be maintained that include:

(a) The times, dates, and dosages of the medications given;

(b) The signature or initials of the care giver who administered the medication; and

(c) Documentation of any errors in administration or adverse reactions.

(4) The center director or designee shall report any adverse reaction to a medication or error in administration to the parent or legal guardian immediately upon recognizing the error or reaction.

(5) Medications shall be secured from access to children.

(6) The oral over-the counter and all prescription medications must be in the original or pharmacy container, have the original label, include the child's name, have child proof caps and have written instructions for administration provided by the parents.

(7) Medications stored in refrigerators shall be in a covered container with a tight fitting lid.

(8) The director shall return unused prescription and over the counter medications to the parent or guardian. The director shall destroy out-of-date medications or return the medications to the parent or guardian.

R430-100-14. Infection Control.

(1) The director shall keep on-site and maintain a portable blood and bodily fluid clean-up kit. All care givers shall know the location and how to use the kit.

(a) The kit shall include: a portable container, disposable gloves, absorbent powder or clumping kitty litter, a plastic garbage bag, a miniature dustpan and hand broom, a paper towel and a small container of disinfectant.

(b) All care givers shall comply with the universal blood and bodily fluid precautions according to the OSHA Bodily Fluid Blood-Borne Pathogen standard.

(2) Personal hygiene items such as combs, hair accessories, and toothbrushes may not be shared between children.

(3) Indoor activity equipment, such as climbing structures and play houses, and toys shall be cleaned and sanitized weekly or more often as necessary. If some equipment is not cleanable the director or owner shall ensure children and care givers wash hands prior to using the equipment, card board puzzles, books, etc.

(4) Stuffed animals and dress-up clothes shall be machine washed weekly.

(5) If water play tables are used, the care giver shall wash and sanitize the table daily and children shall wash their hands prior to engaging in the activity.

(6) In child care centers, hand washing procedures shall be posted at all hand washing sinks and followed.

(7) Written hand washing policies shall be established to include:

(a) Care givers and children shall wash and scrub their hands for 20 seconds with liquid soap and warm running water. A variance to using liquid soap may be requested as required by R430-100-5.

(b) The use of hand sanitizers shall not replace hand washing, except during off-site activities.

(c) Care givers shall teach children proper hand washing techniques and oversee hand washing whenever possible.

(d) Care givers and children shall wash their hands after

using the toilet, before and after eating, upon returning from outdoor playtime, after wiping noses, after handling animals and before and after food preparation.

(e) Only single use towels from a covered dispenser or electric hand-drying device may be used to dry hands.

R430-100-15. Diapering.

(1) Diapering procedures shall be posted by each diapering station and followed.

(2) Each diapering station shall be equipped with railings to prevent a child from falling. Children shall not be left unattended on the diapering surface.

(3) The diapering surface shall be non-absorbent, cleaned and sanitized after each diaper change.

(a) If a disposable paper covering is used, it shall be placed between the child and the diapering surface, and shall be disposed of following each diaper change.

(b) Sanitizers shall be used per product instruction or be commercially prepared. Sanitizer containers shall be labeled and stored in the diaper changing area, out of the reach of children.

(4) Soiled disposable diapers shall be placed in a container that is lined and has a tightly fitting lid.

(5) Diaper containers shall be cleaned and disinfected daily.

(6) Care givers shall wash their hands directly after changing a diaper and in between diaper changes.

(7) If cloth diapers are used for children, the following applies:

(a) Cloth diapers shall not be rinsed at the center;

(b) After a diaper change, the cloth diaper shall be placed directly into a container labeled with the child's name or diapering service container.

(8) Care givers whose designated responsibility is the care of diapered children, shall not prepare food for children or staff outside of the classroom area used by infants and toddlers.

(9) Staff who prepare food in the kitchen shall not change diapers or assist in toilet training.

R430-100-16. Safety.

(1) Spaces, toys, grounds, and equipment shall be maintained in a safe manner to prevent injury to children.

(2) Toys and equipment used by children must be in compliance with the guidelines of the Consumer Product Safety Commission.

(3) There shall be no firearms or other weapons accessible to children. Firearms and other weapons shall be stored separately from ammunition and all shall be in a locked cabinet or area, unless the use is in accordance with UCA 53-5-701 Concealed Weapons Act, UCA 76-10-523 Persons Exempt from Weapons Laws or as otherwise authorized by law.

(4) Electrical outlets accessible to children four years of age or younger shall have protective caps or safety devices when not in use.

(5) Glass surfaces within 36 inches from the floor shall be of safety glass or have a protective barrier in place.

(6) Care givers and staff shall store toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials in a locked or protected area to prevent access to children. All toxic or hazardous chemicals shall be stored in the original container, or labeled in the container.

(7) The center may not have portable space heaters, Fireplaces and wood burning stoves that are accessible to children when in use.

(8) Children shall not have access to poisonous plants.

(9) Strings and cords long enough to choke a child, such as those found on pull toys, window blinds, or drapery cords, shall be inaccessible to children four years of age and younger.

(10) Any structure built prior to 1978 which has peeling, flaking, chalking, or failing paint on the interior or exterior shall be tested for lead-based paint. If paint lead levels are equal to or exceed 0.06% by weight, the structure must be remodeled by encapsulation or enclosure when possible or by complete removal of lead-based paint by trained individuals.

(11) Hot water accessible to children shall not exceed the scalding standard of 120 degrees Fahrenheit.

R430-100-17. Child Discipline.

(1) The licensee shall inform all care givers, parents or guardians and children of conduct expected by setting clear and understandable rules.

(2) Disciplinary measures shall be implemented so as to encourage the child's self-control to reduce risk of injury and any adverse health effects to self or others. Positive discipline measures include but are not limited to:

(a) positive behavioral rewards;

(b) other forms of positive guidance;

(c) redirection; or

(d) time out.

(3) Discipline measures shall not include any of the following:

(a) corporal punishment, including hitting, shaking, biting, pinching, or spanking;

(b) restraint of a child's movement by binding or tying;

(c) use of abusive, demeaning or profane language;

(d) force or withholding of food, rest or toileting; or

(e) confining a child in a locked closet, room, or similar area.

(4) The director shall provide each parent and legal guardian a copy of the discipline methods used at the center.

R430-100-18. Food Service.

(1) If food service is provided, the child care center's food service shall comply with the Utah Department of Health Food Service Sanitation Regulations, Rule R392-100, and with the local health department food service regulations.

(2) All food served in the center, including food brought in by parents or care givers, for service to other children, shall be commercially prepared.

(3) Food and drink brought in by parents for an individual child's use must be labeled with the child's full name and refrigerated if needed.

(4) All care givers who prepare or serve food and snacks must have a current food handlers permit approved for child care facilities by the local Health Department.

(5) Children's food shall be served on plates, napkins or other sanitary holders, which includes a high chair tray. Food shall not be placed on a bare table or eating surface.

(6) Facilities that provide food service shall meet the following requirements:

(a) A different menu shall be planned for each day of the week;

(b) Menus may be cycled;

(c) The current week's menu shall be posted for review by parents and guardians and all substitutions shall be noted on the menu and retained for one week. If substitutions are made, the menu must meet the requirement of the United States Department of Agriculture (USDA) Child Care Food Program guidelines;

(d) Menus shall comply with the USDA Child and Adult Care Food Program guidelines. Centers may use Department standard approved menus. Menus shall be individually approved by the Department, or be approved by a registered dietitian. Dietitian approval shall be noted on the menu;

(e) The director shall post a list of children's food allergies and sensitivities in the food preparation area and communicate special needs to staff serving food to the children unless otherwise requested in writing by the parents.

(f) The care givers shall provide meals and snacks according to the center policy but at least once every three hours.

R430-100-19. Animals.

(1) Any animal on the premises shall be clean and in good health.

(2) Dogs, cats and other animals shall have current immunization records available at the center for all diseases transmissible to humans.

(3) Animals not confined in enclosures shall be hand held, under leash control, or under voice control.

(4) No dangerous or aggressive animals are allowed on center premises.

(5) Animals are not allowed in food preparation, storage or dining areas.

(6) Animal cages, equipment, and surrounding areas shall be clean and sanitary. Animal cages and equipment shall not be cleaned in food preparation, food storage or dining areas at any time. Children shall not assist with the cleaning of animals, animal cages, pens or animal equipment.

(7) The director shall inform the parent or guardian of all animals kept at the center.

(8) Children shall not be permitted to handle reptiles, including turtles and lizards.

R430-100-20. Transportation.

(1) Any vehicle used for transporting children shall have a current vehicle registration and safety inspection.

(2) The director shall maintain all vehicles used to transport children in a safe and clean condition.

(3) Each vehicle shall:

(a) Contain a first aid and a body fluid clean-up kit;

(b) Be able to maintain temperatures between 60-90 degrees Fahrenheit;

(c) Be equipped with individual, size-appropriate safety restraints such as car seats and seat belts, which are defined in the federal motor vehicle safety standards contained in the Code of Federal Regulations, Title 49, Section 571.213, for each child that are appropriate to the vehicle type and are installed and used in the manner prescribed by the manufacturer;

(d) Be enclosed; and

(e) Be locked during transport.

(4) One person accompanying children during transport shall have current CPR and first aid course completion.

(5) The child care center shall have written policies and procedures to address transportation of children to and from school that are distributed to parents or posted that include:

(a) How long the children will be unattended at each school before the vehicle arrives or after the vehicle leaves in the morning;

(b) What steps staff will take if children fail to meet the vehicle; and

(c) When and how parents will be notified of delays or problems with transportation to and from school.

(6) Smoking in vehicles is prohibited at all times that children are present.

(7) Any vehicle used for transporting children shall be driven by an adult who holds a current state driver's license that authorizes the driver to operate the type of vehicle driven.

(8) No child shall be permitted to remain unattended in the vehicle. Children shall remain seated while the vehicle is in motion. Keys shall be removed from the vehicle at all times when the driver is not in the driver's seat.

R430-100-21. Housekeeping and Maintenance.

(1) There shall be adequate housekeeping services to maintain a clean and sanitary environment in the center.

(2) Laundry shall be washed with soap and water and be thoroughly dried in a clothes dryer.

(3) Clean laundry shall be stored in a manner that protects it from contamination.

(4) The center shall take effective and safe measures to prevent, control and eliminate the presence of insects, rodents, and other vermin on the premises.

(5) Draperies, carpets, and furniture shall be maintained in good repair.

(6) Cracks in plaster, peeling wallpaper or paint, damaged floor coverings, and missing tile shall be repaired promptly.

(7) Entrances, exits, steps, and outside walkways shall be maintained in a safe condition, free of ice, snow and other hazards.

R430-100-22. Physical Environment.

(1) All rooms and occupied areas in the facility shall have provisions for ventilation. Windows with screens may be used for ventilation when weather conditions permit, but mechanical ventilation shall be provided during periods of temperature extremes.

(2) The cooling system shall be capable of maintaining temperatures of 80 degrees Fahrenheit (F) in areas occupied by children.

(3) The heating system shall be capable of maintaining temperatures of 72 degrees F. in areas occupied by children.

(4) Adequate light intensity in all facilities shall be maintained by keeping lighting equipment in good working order.

(5) There shall be one toilet and one lavatory for every 15

children, excluding diapered children.

(6) For centers constructed after July 1, 1997, there shall be a hand washing sink in play areas.

R430-100-23. Sleep Areas and Equipment.

(1) A separate crib, cot, bed, or mat shall be provided for each child who will be present in the child care center during nap or rest periods.

(2) Sleeping equipment shall be spaced a minimum of two feet apart to allow for easy access, adequate ventilation and ease of exiting.

(3) Mats and mattresses shall be at least two inches thick and have waterproof, cleanable coverings.

(4) Mats and sleeping equipment shall be cleaned and sanitized as needed, but at least weekly, and prior to use by another child or there shall be a procedure to assign a mat or cot to each child.

(5) Each child shall have a sheet and a blanket, or an acceptable alternative, that are:

(a) used daily;

(b) clearly assigned to a child;

(c) stored separately from other children's when not in use, and

(d) laundered at least once weekly, and prior to use by another child.

(6) The center shall provide children with an opportunity for rest and sleep in an environment for sleeping that includes subdued lighting, low noise level, and freedom from distractions.

R430-100-24. Emergency and Disaster.

(1) The licensee shall have a written emergency and disaster plan for reporting and evacuating in cases of fire, flood, earthquake, blizzard, power failure or other disasters that could create structural damage or pose a health or safety hazard. The center shall have a written emergency plan that addresses steps to be followed by staff in case of:

(a) a missing child;

(b) a medical emergency or injury involving a child or staff person;

(c) the death of a child or staff person.

(2) The written plans shall be on site and immediately accessible to all staff.

(3) As required by R710-8, Public Safety, Fire Marshal, Day Care Rules the director shall hold simulated disaster drills semi-annually and simulated fire drills shall be held monthly for care givers and children.

(a) The director shall document all drills, including date and time of the drill, the time it took to evacuate, the number of participants, and any problems encountered.

(b) Drills shall be held on a variety of days and at various times of the day.

(4) Each child care center shall maintain a telephone in working order, unless there is a utility failure.

(5) The emergency plan shall contain:

(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, poison control and other appropriate agencies.

(d) Assignment of personnel to specific tasks during an emergency;

(e) The procedure to transport and evacuate children and staff to other locations; and

(f) Procedures to turn off gas, electricity, and water.

(6) The director shall post evacuation plans in prominent locations in each room or area of the center. The plan shall include evacuation routes, location of fire alarm boxes, and fire extinguishers.

(7) The licensee shall ensure that the center is inspected annually by the local fire authority and shall maintain a copy of the most recent inspection report at the center. Each fire extinguisher shall have a current tag and annual inspection.

(8) There shall be at least one care giver on duty in the center during business hours who has a current department approved course completion or certification in basic child and infant first-aid and Cardiac Pulmonary Resuscitation (CPR).

(9) Each center shall maintain two accessible first aid kits, one kit for the center and one kit to be taken on field trips.

(a) Each first aid kit shall contain supplies as recommended by the American Red Cross First Aid Handbook, current edition, or the department provided list of contents.

(b) Each first aid kit shall contain a first aid manual.

(c) First aid kits shall be restocked after use and shall be stored in an area inaccessible to children.

R430-100-25. Infant Care.

(1) Infants and toddlers shall be cared for in separate areas and shall not use outdoor play areas at the same time as older children. Infant and toddler areas shall not be used as access to other areas or rooms by children and parents, unless the Department has given variance approval.

(2) Infants may be included in mixed age groups only when eight or fewer children are present in the center. No more than two infants shall be included in the mixed age group unless there are two care givers with the group.

(3) Each infant shall be allowed to follow his or her own pattern of sleeping and eating.

(4) Diapers shall be checked as needed but diaper checks shall not exceed every three hours. The child shall be changed when he is found to be wet or soiled.

(5) The center shall maintain a record of diapering activities, sleeping and feeding times for each infant. The care giver shall record each activity as it occurs. The records shall be maintained on site for the current month and be immediately accessible for Department review.

(6) If an infant is unable to sit upright and hold his own bottle, a care giver shall hold the infant during bottle feeding to prevent choking, baby bottle tooth decay, etc. Bottles shall not be propped.

(7) Each infant shall receive physical stimulation and positive verbal interaction at least every 30 minutes. Awake infants shall not be confined for more than 30 minutes in one piece of equipment, including but not limited to swings, high chairs, or cribs. Infants shall have freedom of movement in a safe area.

(8) Infant walkers with wheels are not permitted.

(9) High chairs will have T-shaped safety straps that are used whenever children are placed in the chair.

(10) High chair trays shall be washed, rinsed, and sanitized prior to each use. The sanitizer shall meet the standards in R392-100 for food contact surfaces.

(11) Baby food, infant formula, and breast milk for infants that are brought from home for an individual child's use shall be:

(a) marked with the child's name;

(b) marked with the date of preparation or opening of the container, such as a jar of baby food;

(c) kept refrigerated, if needed; and

(d) discarded within 24 hours of preparation or opening.

(12) Infant formula shall be discarded after feeding or within two hours of initiating a feeding. Powdered formula or dry foods which are opened, but not mixed, is not considered prepared.

(13) Infants shall sleep in equipment designed for them such as a crib, bassinet, porta-crib, or play pen.

(a) Only one infant shall occupy any one piece of equipment at any time.

(b) Infants shall be placed on their backs for sleeping, unless parents document a medical treatment requirement for a clinical condition.

(c) Infants less than 12 months shall not sleep on mats or cots.

(14) There shall be two sinks in each infant and toddler care area. Centers whose infant and toddler areas were constructed and licensed prior to July, 1997, shall be exempt from this rule.

(a) One sink shall be adjacent to the diapering areas and shall be used exclusively for hand washing after diapering and non-food activities.

(b) One sink shall be used exclusively for the preparation of food and bottles.

(15) Infant care areas shall maintain temperature at 70 degrees Fahrenheit at floor level.

(16) All toys used by infants and toddlers shall be washed daily and after being placed in a child's mouth or being contaminated by bodily fluids.

R430-100-26. Penalty.

The department may impose civil monetary penalties in accordance with Title 63, Chapter 46b, Administrative Procedures Act, if there has been a failure to comply with the provisions of this chapter, or rules promulgated pursuant to this chapter, as follows:

(1) if significant problems exist that are likely to lead to the harm of a child, the department may impose a civil money penalty of $50 to $1,000 per day; and

(2) if significant problems exist that result in actual harm to a child, the department may impose a civil money penalty of $1,050 to $5,000 per day.

KEY: child care facilities
February 15, 2002 **26-39**

R495. Human Services, Administration.
R495-810. Government Records Access and Management Act.
R495-810-1. Request for Access to Department of Human Services Records.

A. Authority. As required by Section 63-2-204(2), this rule specifies where and to whom a request for access of Department of Human Services (DHS) records shall be directed.

B. Definition. Words used in this rule are defined in Section 63-2-103(15) and (16).

C. Requests for Access.

1. All requests for records shall be submitted in accordance with Section 63-2-204(1).

2. A person may submit a request for a record to any DHS office. If the record requested is one originated in that office, that office will respond to the request. If the record is unknown to the office where the request is filed, the request will be sent immediately to the appropriate state or local office. If the office is unsure as to which office is the appropriate one, the request will be sent to the Department of Human Services, Records Manager.

D. News Media/Expedited Release. If a requester demonstrates that he is a member of the news media or that expedited release of the record benefits the public rather than an individual, the request shall be submitted to the Department of Human Services, Records Manager.

R495-810-2. Fee Schedule for Records Copies.

A. Authority. Pursuant to Section 63-2-203, the Department shall charge fees for copying and compiling of records, and may waive fees as specified in this rule.

B. Definition. Words used in this rule are defined in Section 63-2-103.

C. Fee Rates.

1. Fees for copies are based on the number of records to be copied and are as follows:

a. paper: $.25 per side of sheet;

b. audio tape: $5.00 per tape; and

c. video tape: $15.00 per tape.

2. For records which require compiling and reporting in another format, a fee of $25.00 per hour may be charged, or $50.00 per hour if the request requires programmer/analyst assistance.

3. Mailing. The fee for mailing is the actual cost of postage.

D. Payment Waiver.

1. The Department shall fulfill a record request without charge when it determines that:

a. releasing the record primarily benefits the public rather than a person;

b. the individual requesting the record is the subject of the record, or an individual specified in Subsection 63-2-202(1) or (2); or

c. the requester's legal rights are directly implicated by the information in the record, and the requester is impecunious.

2. No fees shall be charged for reviewing a record or inspecting a record according to 63-2-203(4)(a) and (b).

3. The Department shall not require payment of future estimated fees before beginning to process a request, unless fees are expected to exceed $50, or if the requester has not paid fees from previous requests.

4. Fees shall not be waived where records are provided to professionals providing services for a fee to individuals who would otherwise have access to records under Section 63-2-301 through 304.

R495-810-3. Appellate Requests, Research Requests and Intellectual Property Access Requests.

A. Authority. section 63-2-401(9) specifies where and to whom appeals on records access denials may be directed. Section 63-2-201 (10) specifies where and to whom requests regarding duplication and distribution of materials for which the agency owns the intellectual property rights may be directed. Section 63-2-202(8) specifies where and to whom requests for access for research purposes may be directed.

B. Definition. Words used in this rule are defined in Section 63-2-103 (15) and (16).

C. Appeals and Special Requests.

1. All first level appeals shall be directed to the individual(s) designated by the Executive Director of the Department of Human Services.

2. Special requests including requests for access to records for research purposes, and duplication and distribution of materials for which the agency owns the intellectual property rights shall be submitted to the Individuals designated by the Executive Director for the respective Division, Office, Institution, or Bureau of the Department of Human Services.

D. Discretionary Access Authority. As specified in Section 63-2-201 (5) (b) decisions regarding discretionary access to records that are private, or protected under Section 63-2-302, and 63-2-304 where the public interest to know exceeds the right of privacy shall be determined by the Individual(s) designated by the Director for the respective Division, Office, Institution, or Bureau of the Department of Human Services.

R495-810-4. Records Modification and Clarification.

A. Authority. Section 63-2-603 Governmental Records and Access Act and Section 63-46b-4 Utah Administrative Procedures Act designate the option of either formal or informal hearings governing modification of records in dispute.

B. Definition. Words used in this rule are defined in Section 63-2-103(15) and (16).

C. Hearings. Hearings on disputed records accuracy shall be conducted informally according to R497-100-3.

KEY: government documents
December 7, 1998 **63-2-204**
Notice of Continuation February 6, 2002

R495. Human Services, Administration.
R495-878. Department of Human Services Civil Rights Complaint Procedure.
R495-878-1. Authority and Purpose.

A. This rule is promulgated pursuant to Section 63-46a-3 (2) of the State Administrative Rulemaking Act and the Federal Civil Rights statutes and regulations cited below. The Department of Human Services, (Department) adopts, defines, and publishes within this rule complaint procedures that incorporate due process standards and that provide for the prompt and equitable resolution of complaints filed in accordance with any of the following:

(1) Title VI of the Civil Rights Act of 1964, Pub.L. 88-352, 42 U.S.C.A., Section 2000d-1 et seq. (Title VI), and its implementing regulation, Title 45 Code of Federal Regulations (CFR), Part 80, Section 80.4(b)(2);

(2) Section 504 of the Rehabilitation Act of 1973, Pub.L. 93-112, Pub.L. 93-516, Pub.L. 95-602, and Pub.L. 102-569, 29 U.S.C. 794 et seq., and its implementing regulation, Title 45 CFR Part 84, Section 84.7(b); and,

(3) Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. 12131-12134 and its implementing regulation, Title 28 CFR Part 35, Section 35.107.

"Title VI prohibits discrimination on the ground of race, color, or national origin; Section 504 prohibits discrimination on the basis of handicap; and the ADA prohibits discrimination on the basis of disability."

B. The Americans with Disabilities Act mandates 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, this Department, or be subjected to discrimination by this Department including discrimination in employment matters.

R495-878-2. Definitions.

A. The Civil Rights "Coordinator" (ADA, Section 504, and Title VI) for the Department of Human Services is the Director of the Office of Administrative Support. The Coordinator has responsibility for investigating and providing prompt and equitable resolution of complaints filed by persons alleging discrimination in the receipt of services due to disabilities, race, color, or national origin.

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

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

C. "Disability" means, with respect to an individual with a disability, a physical or mental impairment that substantially limits one or more of the major life activities of such an individual; a record of such an impairment; or being regarded as having such an impairment. (Impairment is defined in 29 CFR 163A2.)

D. "Handicapped Person" under Section 504 means any individual who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

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

(2) With respect to other services and activities, an individual with a disability (a handicapped person) who with or without reasonable modification to rules, policies, or practices, the removal of architectural, communication or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

G. "Qualified Individual with a disability" (hereinafter individual) means a person who has a disability which limits one of his or her major life activities and who meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the Department of Human Services or who would otherwise be an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position.

R495-878-3. Filing of Complaints.

A. An individual shall file the complaint in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 180 days from the date of the alleged act of discrimination.

B. The complaint may be filed with any division, office or regional office of the Department or directly with the Coordinator, Civil Rights, Office of Administrative Support, who has been designated as the Coordinator for the Department. Complaints filed locally and not resolved within five (5) working days are to be forwarded to the Coordinator. The complaint shall be in writing or in another accessible format suitable to the individual and delivered or mailed to:

Coordinator, Civil Rights
Office of Administrative Support
PO Box 45500
120 North 200 West, Room 331
Salt Lake City, Utah 84145-0500

C. Each complaint shall:

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

(2) include the nature and extent of the individual's disability; (if ADA or Section 504)

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

(4) describe the action and accommodation desired; and

(5) be signed by the individual or by his or her 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.

E. With or without exhausting DHS procedures, complainants may also file complaints alleging discrimination in employment and in the delivery of services with:

Office For Civil Rights,
U.S. Department of Health and Human Services

Federal Office Building
1961 Stout Street
Denver, Colorado 80295-3538

R495-878-4. Investigation of Complaint.

A. The Coordinator shall conduct an investigation of each complaint received. The Office of Human Resource (OHR) shall assume lead responsibility in conducting investigations for complaints from employees alleging discrimination under Title I of the ADA. OHR investigations will be submitted to the Coordinator to issue a decision. The Office of Administrative Support shall assume lead responsibility in conducting all other civil rights investigations under the sections of the Acts referenced in Part I of this rule. Investigations 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 878-3. C of this rule if it is not made available by the individual.

B. When conducting the investigation, the Coordinator may seek assistance from other divisions/offices within the Department and the Office of the Attorney General in determining what action, if any, shall be taken on the complaint. The Coordinator shall consult with the State ADA Coordinating Committee before making any decision that would involve:

(1) an expenditure of funds which is not absorbable within the agency or Department's budget and would require appropriation authority;

(2) facility modification beyond the Department's capability due to the constraint in item (1) above; or

(3) reclassification or reallocation in merit system grade.

R495-878-5. Issuance of Decision.

A. Within 15 working days after receiving the complaint, the Coordinator shall issue a decision outlining in writing or in another accessible format suitable to the individual stating what action, if any, shall be taken on the complaint.

B. If the Coordinator is unable to reach a decision within the 15 working day period, written notice (or notice in another acceptable format) will be provided to the complainant explaining the delay and the amount of additional time needed.

R495-878-6. Appeals.

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

B. The appeal shall be filed in writing with the Executive Director of the Department of Human Services.

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 appointed 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 Division Director may also appeal a decision by the Coordinator when the decision is perceived to negatively affect Division operation.

F. The Executive Director or appointed designee shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the Coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted, if necessary, to clarify questions of fact before making any decision that would require:

(1) an expenditure of funds which is not absorbable within the agency or Department's budget and would require appropriation authority:

(2) facility modifications beyond the Department's capability due to the constraint in item (1) above; or

(3) reclassification or reallocation in merit system grade.

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

H. If the Executive Director is unable to reach a decision within the fifteen day working period, he shall notify the individual in writing or in another accessible format suitable to the individual why the decision is delayed and the additional amount of time needed to reach a decision.

R495-878-7. 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 Coordinator, Executive Director or their designees issue the decision at which time any portions of the record which may pertain to the individual's medical conditions 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, Executive Director or designees shall be classified as public information.

R495-878-8. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under the State Anti-Discrimination Complaint Procedures Section (67-19-32); the Federal ADA Complaint Procedures (28 CFR Subpart F, beginning with Part 35.170, 1992 Edition); the Federal Rehabilitation Act procedures (29 U.S. C. Section 794); or any other Utah State or Federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: developmentally disabled, Americans with Disabilities Act 1992*, Rehabilitation Act 1973*, Civil Rights Act 1964*
1993 62A-1-111
Notice of Continuation February 7, 2002

R527. Human Services, Recovery Services.
R527-34. Non-IV-A Services.
R527-34-1. Non-IV-A Services.

1. The Office of Recovery Services/Child Support Services (ORS/CSS) will provide the following services to recipients of child support services:

a. Attempt to locate the obligor;

b. Attempt to collect the current child support amount;

c. Attempt to collect past-due child support which is owed on behalf of a child, regardless of whether the child is a minor;

d. Attempt to enforce court-ordered spousal support if the minor child of the parties resides with the obligee and ORS/CSS is enforcing the child support order; ORS/CSS will only continue to collect spousal support after the child has emancipated if income withholding is already in effect;

e. Attempt to collect child care expenses if the past-due amount has been reduced to a sum-certain judgment;

f. Attempt to collect ongoing child care expenses if all of the following criteria are met:

i. the obligor or the obligee made a specific request for ORS/CSS to collect ongoing child care;

ii. the child care obligation is included as a specific monthly dollar amount in a court order along with a child support obligation; and,

iii. neither parent is disputing the monthly child care amount;

g. Attempt to collect medical support if the amount is specified as a monthly amount due in the order or has been reduced to a sum-certain judgment;

h. Attempt to enforce medical insurance if either parent has been ordered to maintain insurance;

i. Attempt to establish paternity;

j. Review the support order for possible adjustment of the support amount, in compliance with R527-231.

2. ORS/CSS adopts the federal regulations as published in 45 CFR 302.33 (2001) which are incorporated by reference. 45 CFR 302.33 provides options which ORS/CSS may elect to implement. ORS/CSS elected to implement the following options:

a. ORS/CSS has elected to charge no application fee to applicants for child support enforcement services.

b. ORS/CSS has elected to recover costs from the individual receiving child support enforcement services. The costs which will be recovered are listed in R527-35-1.

c. ORS/CSS has elected not to recover from the non-custodial parent the costs listed in R527-35-1 which are paid by the individual receiving child support services.

KEY: child support
March 24, 2000 **62A-11-107**
Notice of Continuation January 24, 2002

R590. Insurance, Administration.
R590-70. Insurance Holding Companies.
R590-70-1. Authority.

This rule is adopted pursuant to Section 31A-2-201, Utah Code Annotated, which authorizes rules to implement the Insurance Code.

R590-70-2. Definitions.

A. "Executive officer" means any individual charged with active management and control, in an executive capacity, including a president, vice president, treasurer, secretary, controller, and any other individual performing for a person, whether incorporated or unincorporated, functions corresponding to those performed by the foregoing officers.

B. "Ultimate controlling person" means that person within an insurance holding company system which is not controlled by any other person.

C. All other terms used herein shall have the same meanings prescribed in Section 31A-1-301 of the Utah Code.

R590-70-3. Acquisition of Control - Statement Filing.

A. A person required to file a statement pursuant to Section 31A-16-103 shall furnish the required information on Holding Company Form A, entitled "Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer."

B. The applicant shall promptly advise the commissioner of any changes in the information so furnished arising subsequent to the date upon which such information was furnished but prior to the commissioner's disposition of the application.

R590-70-4. Registration of Insurers - Statement Filing.

A. An insurer required to file a statement pursuant to Section 31A-16-105 U.C.A., shall furnish the required information on Holding Company Form B, entitled "Insurance Holding Company System Registration Statement.

B. An amendment to Holding Company Form B shall be filed within 15 days after the end of any month in which the following occurs:

1. There is a change in the control of the registrant, in which case the entire form shall be made current;

2. There is a material change in the information given in Item 5 or Item 6 of the form, in which case the respective item shall be made current;

C. An amendment to Holding Company Form B shall be filed by May 1 of each year. Such amendment shall make current all information in Holding Company Form B.

R590-70-5. Alternative and Consolidated Registrations.

A. Any authorized insurer may file a registration statement on behalf of any affiliated insurer or insurers which are required to register under Section 31A-16-105 U.C.A. A registration statement may include information regarding any insurer to the insurance holding company system even if such insurer is not authorized to do business in this State. In lieu of filing a registration statement on Holding Company Form B, the authorized insurer may file a copy of the registration statement or similar report which it is required to file in its State of domicile, provided:

1. the statement or report contains substantially similar information required to be furnished on Holding Company Form B; and

2. the filing insurer is the principal insurance company in the insurance holding company system.

B. The question of whether the filing insurer is the principal insurance company in the insurance holding company system is a question of fact and an insurer filing a registration statement or report in lieu of Holding Company Form B on behalf of an affiliated insurer, shall set forth a simple statement of facts which will substantiate the filing insurer's claim that it, in fact, is the principal insurer in the insurance holding company system.

C. With the prior approval of the commissioner, an unauthorized insurer may follow any of the procedures which could be done by an authorized insurer under paragraph (a) above.

R590-70-6. Disclaimers and Termination of Registration.

A disclaimer of affiliation pursuant to Section 31A-16-105(10) U.C.A., or a request for termination of registration pursuant to Section 31A-16-105(6) U.C.A., claiming that a person does not, or will not upon the taking of some proposed action, control any other person (hereinafter referred to as the "subject") shall contain the following information:

A. the number of authorized, issued and outstanding voting securities of the subject;

B. with respect to the person whose control is denied and all affiliates of such person:

1. The number and percentage of shares of the subject's voting securities which are held of record or known to be beneficially owned, and the number of such shares concerning which there is a right to acquire, directly or indirectly,

2. Information as to all transactions in any voting securities of the subject which were effected during the past six months by such persons.

C. All material relationships and bases for affiliation between the subject and the person whose control is denied and all affiliates of such person.

D. A statement explaining why such person should not be considered to control the subject.

R590-70-7. Extraordinary Dividends and Other Distributions.

Requests for approval of extraordinary dividends or any other extraordinary distribution shall include the following:

A. the date established for payment of the dividend:

B. a statement as to whether the dividend is to be in cash or other property and, if in property, the fair market value of such property together with an explanation of the basis for valuation;

C. the amounts and dates of dividends paid in the last 12 month period (including the date proposed for payment of the dividend for which approval is sought);

D. a balance sheet and statement of income for the period intervening from the last annual statement filed with the commissioner and the end of the month preceding the month in which the request for dividend approval is submitted;

E. a brief statement as to the effect of the proposed

dividend upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs.

R590-70-8. Forms - General Requirements.

A. Forms A, B, C, and D are intended to be guides in the preparation of the statements required by Sections 31A-16-103, 31A-16-105, and 31A-16-106. They are not intended to be blank forms which are to be filled in. These statements filed shall contain the numbers and captions of all items, but the text of the items may be omitted provided the answers thereto are prepared in such a manner as to indicate clearly the scope and coverage of the items. All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made.

B. Three complete copies of each statement including exhibits and all other papers and documents filed as a part thereof, shall be filed with the commissioner by personal delivery or mail addressed to: Insurance Commissioner of the State of Utah. A copy of Form C shall be filed in each state in which an insurer is authorized to do business, if the commissioner of that state has notified the insurer of its request in writing, in which case the insurer has 14 days from receipt of the notice to file such form. At least one of the copies shall be manually signed in the manner prescribed on the form. Unsigned copies shall be conformed. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the statement.

C. Statements should be prepared on paper 8 1/2"x 11" in size and preferably bound at the top or the top left-hand corner. Exhibits and financial statements, unless specifically prepared for the filing, may be submitted in their original size. All copies of any statement, financial statements, or exhibits shall be clear, easily readable and suitable for photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies. Statements shall be in the English language and monetary values shall be stated in United States currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency normally shall be converted into United States currency.

D. Forms A, B, C, and D can be obtained from the Utah State Insurance Department.

R590-70-9. Forms - Incorporation by Reference, Summaries and Omissions.

A. Information required by any item of Form A, Form B or Form D may be incorporated by reference in answer or partial answer to any other item. Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or any other document may be incorporated by reference in answer or partial answer to any item of Form A, Form B or Form D provided such document or paper is filed as an exhibit to the statement. Excerpts of documents may be filed as exhibits if the documents are extensive. Documents currently on file with the commissioner which were filed within three years need not be attached as exhibits. References to information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that such material is to be incorporated by reference in answer to the item. Matter shall not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear or confusing.

B. Where an item requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the pertinent provisions of the document. In addition to such statement, the summary or outline may incorporate by reference particular parts of any exhibit or document currently on file with the commissioner which was filed within three years and may be qualified in its entirety by such reference. In any case where two or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, a copy of only one of such documents need be filed with a schedule identifying the omitted documents and setting forth the material details in which such documents differ from the documents a copy of which is filed.

R590-70-10. Forms-Information Unknown or Unavailable and Extension of Time to Furnish.

A. Information required need be given only insofar as it is known or reasonably available to the person filing the statement. If any required information is unknown and not reasonably available to the person filing, either because the obtaining thereof would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the person filing, the information may be omitted, subject to the following conditions:

(1) The person filing shall give such information on the subject as it possesses or can acquire without unreasonable effort or expense, together with the sources thereof; and

(2) The person filing shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information.

B. If it is impractical to furnish any required information, document or report at the time it is required to be filed, there may be filed with the commissioner as a separate document:

(1) identifying the information, document or report in question;

(2) stating why the filing thereof at the time required is impractical; and

(3) requesting an extension of time for filing the information, document or report to a specified date. The request for extension shall be deemed granted unless the commissioner within 60 days after receipt thereof enters an order denying the request.

R590-70-11. Forms - Additional Information and Exhibits.

In addition to the information expressly required to be included in Form A, Form B, Form C and Form D, there shall

be added such further material information, if any, as may be necessary to make the information contained therein not misleading. The person filing may also file such exhibits as it may desire in addition to those expressly required by the statement. Such exhibits shall be so marked as to indicate clearly the subject matters to which they refer. Changes to Forms A, B, C or D shall include on the top of the cover page the phrase: "Change No. (insert number) to" and shall indicate the date of the change and not the date of the original filing.

R590-70-12. Summary of Registration - Statement Filing.

An insurer required to file an annual registration statement pursuant to Section 31A-16-105, Utah Code is also required to furnish information required on Form C, hereby made a part of these regulations. An insurer shall file a copy of Form C in each state in which the insurer is authorized to do business, if requested by the commissioner of that state.

R590-70-13. Separability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.

KEY: insurance law
1992 31A-2-201
Notice of Continuation February 21, 2002

R590. Insurance, Administration.
R590-78. Exchange-Traded Options.
R590-78-1. Authority.

Section 31A-2-201 empowers the Commissioner of Insurance to make reasonable rules necessary for, or as an aid to, the effectuation of any provisions of the Insurance Code. Subsection 31A-18-105(13) gives the commissioner authority to write a rule listing other investments than those listed as authorized investments in the Insurance Code.

It is the purpose of this rule to establish procedures and guidelines for all domestic insurance companies with respect to the sale and purchase of exchange-traded call options.

R590-78-2. Definitions.

The following words and terms, when used in this rule, shall have the following meanings, unless the context clearly indicates otherwise.

1. "Call Option" means an option contract or contracts, under which the holder of the option has the right, under the terms of the option, to purchase a specified number of shares or other units of the underlying security covered by the option at a specified price per share or unit prior to the fixed expiration time of the option.

2. "Exchange" means a national securities exchange registered under the Securities Exchange Act of 1934, as amended, whose rules respecting transactions in options have been approved pursuant to Section 19(b) of this Act.

3. "Exchange-Traded" means traded on the floor of an exchange.

4. "Security or Securities" means a security or securities authorized to be acquired and owned by a domestic insurance company under the applicable provisions of the Utah Insurance Code.

5. "Exercise Price" means the price per share or unit for which the holder of a call option may purchase the underlying security upon exercise of the option.

6. "Escrow Receipt" means a receipt issued to the Options Clearing Corporation with respect to the escrowed security held on deposit by a bank, trust company or other custodian approved by The Options Clearing Corporation for that purpose.

7. "Escrowed Security" means a security with respect to which an escrow receipt has been issued.

8. "Closing Purchase Transaction" means the purchase on an exchange, but not otherwise, of an exchange-traded call option of the same series as an option previously sold, the effect of which is to reduce or terminate the obligation of an exchange-traded call option seller with respect to the option previously sold.

9. "Class of Options" means options covering the same underlying security.

10. "Series of Options" means options of the same class having the same exercise price and expiration time.

R590-78-3. Transactions in Exchange-Traded Call Options.

A domestic insurance company can engage in the following transactions in call options on an exchange but not otherwise, and solely in accordance with the rules of the exchange on which these transactions take place:

1. the sale of exchange-traded call options solely with respect to securities owned by it; and

2. the purchase of exchange-traded call options solely in closing purchase transactions.

A domestic insurance company cannot engage in any other exchange-traded options transactions.

R590-78-4. Procedure for Selling Call Options.

The following procedures shall be followed with respect to the sale of exchange-traded call options by domestic insurers:

Any domestic insurance company selling or intending to sell a call option shall enter into an agreement with the bank, trust company or other custodian with which the security underlying any such call option is or is to be deposited for issuance of an escrow receipt and a copy of the escrow receipt identifying the deposited securities with particularity and setting forth the terms of the option with respect to which the escrow receipt is issued shall be maintained by the insurance company and the escrow receipt shall be produced for inspection upon the request of the Insurance Commissioner.

R590-78-5. Accounting for Transactions.

A domestic insurance company which engages in exchange-traded options transactions shall keep its books and records on a basis which clearly shows the nature and amount of each transaction and is consistent with the provisions of the Internal Revenue Code as amended from time to time, and the tax regulations and rulings issued from time to time by the Internal Revenue Service of the United States, relating to the exchange-traded options transactions.

R590-78-6. Valuation.

Securities against which an exchange-traded call option has been sold shall be valued at the lesser of the exercise price specified in the option contract or the market value of the securities at the date of valuation.

R590-78-7. Specific Requirements.

1. Each option transaction shall reflect prudent judgment and shall have a rationale related to conservative management of assets rather than speculation.

2. The domestic insurance company shall establish and maintain records as to each transaction.

R590-78-8. Severability.

If any provision of this rule or its application to any person or situation is held invalid, this invalidity may not affect any other provision or application of the rule which can be given effect without the invalid provision or application and to this end the provisions of this rule are declared to be severable.

KEY: insurance law
1994 **31A-2-201**
Notice of Continuation February 26, 2002 **31A-18-105**

R590. Insurance, Administration.

R590-95. Rule to Permit the Same Minimum Nonforfeiture Standards for Men and Women Insureds Under the 1980 CSO and 1980 CET Mortality Tables.

R590-95-1. Authority.

This rule is promulgated by the Insurance Commissioner pursuant to Subsections 31A-2-201 and 31A-22-408 Utah Code Annotated.

R590-95-2. Purpose.

The purpose of this rule is to permit individual life insurance policies to provide the same cash surrender values and paid-up nonforfeiture benefits to both men and women. No change in minimum valuation standards is implied by this rule.

R590-95-3. Definitions.

A. As used in this rule, "1980 CSO Table, with or without Ten-Year Select Mortality Factors" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the Society of Actuaries Committee to Recommend New Mortality Tables for Valuation of Standard Individual Ordinary Life Insurance, incorporated in the 1980 NAIC Amendments to the Model Standard Valuation Law and Standard Nonforfeiture Law for Life Insurance, and referred to in those models as the Commissioners 1980 Standard Ordinary Mortality Table, with or without Ten-Year Select Mortality Factors.

B. As used in this rule, "1980 CSO Table (M), with or without Ten-Year Select Mortality Factors" means that mortality table consisting of the rates of mortality for male lives from the 1980 CSO Table, with or without Ten-Year Select Mortality Factors.

C. As used in this rule, "1980 CSO Table (F), with or without Ten-Year Select Mortality Factors means that mortality table consisting of the rates of mortality for female lives from the 1980 CSO Table with or without Ten-Year Select Mortality Factors.

D. As used in this rule, "1980 CET Table" means that mortality table consisting of separate rates of mortality for male and female lives, developed by the Society of Actuaries Committee to Recommend New Mortality Tables for Valuation of Standard Individual Ordinary Life Insurance, incorporated in 1980 NAIC Amendments to the Model Standard Valuation Law and Standard Nonforfeiture Law for Life Insurance, and referred to in those models as the Commissioners 1980 Extended Term Insurance Table.

E. As used in this rule, "1980 CET Table (M)" means that mortality table consisting of the rates of mortality for male lives from the 1980 CET Table.

F. As used in this rule, "1980 CET Table (F)" means that mortality table consisting of the rates of mortality for female lives from the 1980 CET Table.

G. As used in this rule, "1980 CSO and 1980 CET Smoker and Nonsmoker Mortality Tables" mean the mortality tables with separate rates of mortality for smokers and nonsmokers derived from the 1980 CSO and 1980 CET Mortality Tables by the Society of Actuaries Task Force on Smoker/Nonsmoker Mortality and adopted by the NAIC in December 1983.

R590-95-4. Rule A.

For any policy of insurance on the life of either a male or female insured delivered or issued for delivery in this state after the operative date of Subsection 31A-22-408(6)(d), U.C.A. for that policy form,

(i) a mortality table which is a blend of the 1980 CSO Table (M) and the 1980 CSO Table (F) with or without Ten-Year Select Mortality Factors may at the option of the company be substituted for the 1980 CSO Table, with or without Ten-Year Select Mortality Factors, and

(ii) a mortality table which is of the same blend as used in (i) but applied to form a blend of the 1980 CET Table (M) and the 1980 CET Table (F) may at the option of the company be substituted for the 1980 CET Table for use in determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits.

The following tables will be considered as the basis for acceptable tables:

A. 100% Male 0% Female for tables to be designated as "the 1980 CSO-A" and "1980 CET-A" tables.

B. 80% Male 20% Female for tables to be designated as the "1980 CSO-B" and "1980 CET-B" tables.

C. 60% Male 40% Female for tables to be designated as the "1980 CSO-C" and "1980 CET-C" tables.

D. 50% Male 50% Female for tables to be designated as the "1980 CSO-D" and "1980 CET-D" tables.

E. 40% Male 60% Female for tables to be designated as the "1980 CSO-E" and "1980 CET-E" tables.

F. 20% Male 80% Female for tables to be designated as the "1980 CSO-F" and "1980 CET-F" tables.

G. 0% Male 100% Female for tables to be designated as the "1980 CSO-G" and "1980 CET-G" tables.

Tables A and G are not to be used with respect to policies issued on or after January 1, 1985 except where the proportion of persons insured is anticipated to be 90% or more of one set or the other or except for certain policies converted from group insurance. Such group conversions issued on or after January 1, 1986 must use mortality tables based on the blend of lives by sex expected for such policies if such group conversions are considered as extensions of the Norris decision. This consideration has not been clearly defined by court or legislative action in all jurisdictions. The values of 1000qx for blended Tables B, C, D, E and F are shown in Appendix I. The letter in Appendix II states the method by which selection factors may be obtained. Table A is the same as 1980 CSO Table (M) and 1980 CET Table (M) and Table G is the same as 1980 CSO Table (F) and 1980 CET Table (F). Appendices I and II are available from the Insurance Department.

R590-95-4A. Rule B.

In determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits for any policy of insurance on the life of either a male or female insured on a form of insurance with separate rates for smokers and nonsmokers delivered or issued for delivery in this state after the operative date of Subsection 31A-22-408-(6)(d) for that policy form, in addition to the mortality tables that may be used according to Section 4,

(i) a mortality table which is a blend of the male and female

rates of mortality according to the 1980 CSO Smoker Mortality Table, in the case of lives classified as smokers, or the 1980 CSO Nonsmoker Mortality Table, in the case of lives classified as nonsmokers, with or without Ten-Year Select Mortality Factors, may at the option of the company be substituted for the 1980 CSO Table, with or without Ten-Year Select Mortality Factors, and

(ii) a mortality table which is of the same blend as used in (i) but applied to form a blend of the male and female rates of mortality according to the corresponding 1980 CET Smoker Mortality Table or 1980 CET Nonsmoker Mortality Table may at the option of the company be substituted for the 1980 CET Table.

The following blended mortality tables will be considered acceptable:

SA: 100% Male 0% Female smoker tables designated as "1980 CSO-SA" and "1980 CET-SA" Tables.

SB: 80% Male 20% Female smoker tables designated as "1980 CSO-SB" and "1980 CET-SB" Tables.

SC: 60% Male 40% Female smoker tables designated as "1980 CSO-SC" and "1980 CET-SC" Tables.

SD: 50% Male 50% Female smoker tables designated as "1980 CSO-SD" and "1980 CET-SD" Tables.

SE: 40% Male 60% Female smoker tables designated as "1980 CSO-SE" and "1980 CET-SE" Tables.

SF: 20% Male 80% Female smoker tables designated as "1980 CSO-SF" and "1980 CET-SE" Tables.

SG: 0% Male 100% Female smoker tables designated as "1980 CSO-SG" and 1980 CET-SG" Tables.

NA: 100% Male 0% Female nonsmoker tables designated as "1980 CSO-NA" and "1980 CET-NA" Tables.

NB: 80% Male 20% Female nonsmoker tables designated as "1980 CSO-NB" and "1980 CET-NB" Tables.

NC: 60% Male 40% Female nonsmoker tables designated as "1980 CSO-NC" and "1980 CET-NC" Tables.

ND: 50% Male 50% Female nonsmoker tables designated as "1980 CSO-ND" and "1980 CET-ND" Tables.

NE: 40% Male 60% Female nonsmoker tables designated as "1980 CSO-NE" and "1980 CET-NE" Tables.

NF: 20% Male 80% Female nonsmoker tables designated as "1980 CSO-NF" and "1980 CET-NF" Tables.

NG: 0% Male 100% Female nonsmoker tables designated as "1980 CSO-NG" and "1980 CET-NG" Tables.

Tables SA, SG, NA and NG are not acceptable as blended tables unless the proportion of persons insured is anticipated to be 90% or more of one sex or the other.

R590-95-5. Unfair Discrimination.

It shall not be a violation of Subsection 31A-23-302(3) of Utah Code for an insurer to issue the same kind of policy of life insurance on both a sex distinct and sex neutral basis.

R590-95-6. Separability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.

KEY: insurance law

1993 **31A-2-101**
Notice of Continuation February 25, 2002 **31A-2-201**
31A-22-408

R590. Insurance, Administration.

R590-99. Delay or Failure to Record Documents and the Insuring of Properties with the False Appearance of Unmarketability as Unfair Title Insurance Practices.

R590-99-1. Authority.

This rule is promulgated pursuant to the general authority vested in the commissioner by Section 31A-2-201(2)(3) to make reasonable rules necessary for, or as an aid to, the effectuation of any provision of the Utah Insurance Code, and pursuant to the specific authority of Section allowing the commissioner to prescribe a classification of material inducements constituting unlawful trade practices, and to define unfair or deceptive acts or practices prohibited in the business of insurance.

R590-99-2. Purpose.

Title insurance is designed to provide indemnification against loss, including a loss resulting from a determination of unmarketability of the insured's interest in real property. The burden of proving any loss, together with the measure of damages, is the obligation of the insured. Normally, a claim of unmarketability of title or a claim involving a "defect, lien or encumbrance" not excluded from coverage will arise in connection with a proposed sale or loan requiring a review of the insured property as to current marketability. The insured owner, as a potential seller or borrower, may then be placed in the position of being forced or coerced into dealing only with his prior insurer or agent purely as the result of time constraints in meeting the requirements of his transaction, and as the only practical alternative to processing his claim and proving his damage as an insured under his existing coverage. The commissioner is advised and is aware that, in some instances, this circumstance has resulted from the intentional delay, neglect or refusal by insurers, through their agents, to record or deliver for recording documentation necessary to support policy insuring provisions, resulting in the false appearance of unmarketability, in the record only, of property which would otherwise be marketable. This practice is deemed to be an unfair or deceptive act or practice detrimental to free competition in the business of insurance and injurious to the public.

R590-99-3. Definitions.

For the purpose of this rule, the commissioner adopts the definitions as particularly set forth in Section 31A-1-301 and in addition the following:

A. "Document" means any instrument in writing relating to real property described in any title insurance policy, contract or commitment, and reasonably required for the support of the insuring provisions.

B. "Record" means to cause to be delivered to the county recorder, or other public official as may be appropriate, any document in the possession or control of any title insurance company or title insurance agent for which a request to record has been made by an insured party.

R590-99-4. Definition and Classification of Unfair or Deceptive Practices and Material Inducements.

A. Any knowing conduct by a title insurance company or title insurance agent which results in the failure, neglect, refusal to record, or to obtain for recording, any document which, unless recorded, results in the apparent unmarketability of title or a title which may not be insurable by another insurer, is defined as an unfair or deceptive act or practice as prohibited by Section 31A-23-302.

B. The issuance or agreement to issue title insurance, or the affirmation of current marketability of title, when the possible recording of documents of title has not occurred, and the record does not manifest a title which would be insurable according to generally accepted title insurance standards, is classified and prescribed to be an advantage and material inducement to obtaining title insurance business as prohibited under Section 31A-23-302(2)(c)(i).

R590-99-5. Severability.

If any provision or clause of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of this provision to other persons or circumstances may not be affected by it.

KEY: insurance law

1994	**31A-2-201**
Notice of Continuation February 26, 2002	**31A-23-302**

R590. Insurance, Administration.
R590-102. Insurance Department Fee Payment Deadlines.
R590-102-1. Authority.

This rule is adopted pursuant to the following sections:

A. 31A-3-103(3), which requires the commissioner to include, in a compilation of rules, the fee schedule set by the legislature;

B. 31A-3-103(5), which requires the commissioner, by rule, to establish the deadlines for each fee payment.

R590-102-2. Purpose and Scope.

A. The purpose of this rule is to comply with the statutory requirement to establish fee deadlines and to provide for the disclosure of this information to licensees and the public.

B. The rule applies to all persons engaged in the business of insurance in Utah, to all licensees, to applicants for licenses or certificates, and to all transactions with the Insurance Department which require the payment of a fee.

R590-102-3. Definitions.

For the purposes of this rule the following definitions will apply:

A. "Fee" is an amount set by the Legislature for services provided by the Insurance Department.

B. "Deadline" is the final date or time by which timely payment must be made.

C. "Filed" means the receipt by the Insurance Department of a complete document, including the required fees.

D. Mailed renewal documents of any type are accepted as received the day they are postmarked.

R590-102-4. Rule.

A. Fees are due and payable when service is requested unless specified in B, C, D, and E below.

B. Insurer fees:

1. Certificate of authority:

a. Initial application for certificate of authority, due with application: $500

b. Continuation of certificate of authority, due March 1, annually: $50

c. Reinstatement of certificate of authority, due with application for reinstatement: $500

d. Filing of amendments to certificate of authority, due with request for amendment: $100

e. Bail Bond Surety Certificate of Authority: $500

2. Redomestication filing by foreign company, due with application: $750

3. Filing of amendments to articles of incorporation, charter, or by laws, per filing: $25

4. Filing annual statement and report of Utah business, due annually on March 1: $250

5. Application for merger, acquisition of change of control, Form A, due with application: $1,500

6. Application for material transactions between affiliated companies, Form D, due with application: $100

7. Holding company registration statement,Form B, due with statement: $25

8. Application for stock solicitation permit, due with application:

a. Public offering, but not an SEC filing: $1,000

b. Private placement and/or SEC filing: $250

9. Application for Accredited Reinsurer:

a. Initial application, due with application: $500

b. Renewal application, due with application: $250

10. Application for Trusteed Reinsurer, due with application:

a. Initial application, due with application: $500

b. Renewal application, due with application: $250

11. Individual license to solicit in accordance with the stock solicitation permit: $50

12. Filing annual statement and renewal of fraternals, due annually on March 1: $50

13. Organizational permit for mutual insurer to solicit applications for qualifying insurance policies or subscriptions for mutual bonds or contribution notes, due with application: $500

14. Filing of registered agent: $10

15. Risk Retention Group annual statement filing: $250

16. Application for surplus lines insurer approval: $500

17. Surplus Lines annual statement filing. U.S. companies due annually on May 1. Alien companies due within 60 days of the annual statement's filing with the insurance regulatory authority where the company is domiciled: $250

18. Initial rate service organization license: $250

19. Annual renewal of rate service organization license, due with renewal: $50

20. Risk Purchasing Group initial filing and annual renewal, due with filing and renewal: $100

21. Power of Attorney fee: $10

22. Authorization to appoint and remove agents: $10

C. Individual Producer and Agency fees:

1. Individual Producer:

a. Resident and non-resident full line producer license or renewal per two year license period, agent, broker, consultant, surplus lines broker, independent adjuster, public adjuster, reinsurance intermediary broker, third party administrator, title search, title escrow, title search and escrow, title marketing only, workers compensation:

(1) Initial license, due with application: $60

(2) Renewal license, due with application: $60 Effective January 1, 2000.

b. Resident and non-resident limited line producer license or renewal per two year license period, credit life and credit disability, motor club, travel, credit involuntary unemployment and credit property, rental car related, bail bond:

(1) Initial license, due with application: $45

(2) Renewal license, due with application: $45 Effective January 1, 2000.

c. Third Party Administrator license renewal: $40 until January 1, 2000.

d. Resident agent's license renewal: $30 until January 1, 2000.

e. Nonresident agent's license renewal: $30 until January 1, 2000.

f. Consultant's license, resident or nonresident renewal: $40 until January 1, 2000.

g. Broker's license, resident or nonresident renewal: $40 until January 1, 2000.

h. Adjuster's license renewal: $40 until January 1, 2000.

i. Surplus line broker's license renewal: $40

j. Managing General Agent license renewal: $40

k. Agent's certificate of appointment: initial appointment, termination of appointment or renewal of appointment: per two-year period or fraction of it, $12 initial and termination due when requested; renewal due not later than June 30 of odd numbered years.

1. Addition of producer classification or line of authority to individual producer license or agency license, due with request for additional classification or line of authority: $25

2. Agency fees:

a. Resident and non-resident agency license or renewal per two year license period:

(1) Initial license, due with application: $60

(2) Renewal license, due with application: $60 effective January 1, 2000.

(3) The initial and renewal agency license fees include the first twenty designees to that license. Each designee beyond twenty must be paid for as described in 2.c. below.

b. Agency license, resident or nonresident renewal: $30 until January 1, 2000.

c. Agency designee additions or terminations during the license period, due with request for addition or termination: $12

3. Continuing Education fees:

a. Filing certificate or other proof of completion of continuing education, per individual licensee required to complete continuing education, due with license renewal: $10

b. Continuing education provider initial application and annual renewal, due with application or renewal: $100

c. Continuing education course post-approval, due with request for approval: $5 per credit hour, minimum fee $25

D. Rate and Form filing fees:

1. Filing policy forms, rates, rules, and related documents, due with filing: $20

2. Life insurance illustration certification filing: $30

3. Workers compensation loss cost multiplier list: $5

E. Other fees:

1. Photocopy, per page: $.25

2. Copy complete annual statement, per book: $40

3. Affixing commissioner's seal and certifying any paper, due within ten days of request: $10

4. Accepting service of legal process: $10

5. Copy of department's annual Report to the Governor: $10

6. Issuance of mailing lists, or computer print-outs, per page: $1

7. Electronic format list, company, agency, individual, up to 500 records: minimum fee of $50; over 500 records, $.10 per record up to a maximum of $500

8. Returned check charge: $15

9. Relative Value Study book: $10

F. Any fee which shall be payable to the Insurance Department and is not included in Subsection R590-102-4(A), (B), (C), (D) and (E) shall be due upon application or filing, if applicable; otherwise within ten days of notice.

R590-102-5. Conditions or Exceptions.

A. Mailing. A fee payment which is delivered by mail will be considered to have been made as of the date of the postmark.

B. Payment by check.

1. Checks shall be made payable to the Utah Insurance Department.

2. A check which is dishonored in the process of the collection will not constitute payment of the fee for which it was issued and any action taken pursuant to the fee payment will be negated. Any late fees or penalties will apply until proper payment is made. Tender of a check to the department, that is subsequently dishonored, is a violation of this rule.

C. Cash payment. All payment in cash should be made in person, by exact change, if possible. The Insurance Department will not be responsible for unreceipted cash which is lost or misdelivered.

D. Payment by Credit Card.

1. Any fee due may be paid with a credit card. Credit card payments shall be made to the Utah Insurance Department.

2. Credit card payments that are disallowed will not constitute payment of the fee for which it was used and any action taken pursuant to the fee payment will be negated. Any late fees or penalties will apply until proper payment is made. Credit card payments that are disallowed are violations of this rule.

E. Retaliation. All fees, except individual producer and agency fees, are subject to retaliation, in accordance with Section 31A-3-401 if higher fees are imposed by other states or countries.

R590-102-6. Separability.

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of this provision to other persons or circumstances may not be affected.

KEY: insurance

July 28, 1999	**31A-2-201**
Notice of Continuation February 21, 2002	**31A-2-211**
	31A-3-103

R590. Insurance, Administration.
R590-103. Security Deposits.
R590-103-1. Authority.

This rule is promulgated by the Insurance Commissioner pursuant to Subsections 31A-2-201(3) and 31A-2-206(17), which authorizes rules to implement the Utah Insurance Code.

R590-103-2. Purpose and Scope.

The purpose of this rule is to implement provisions relating to required deposits with the commissioner of insurance and adopt forms for that purpose. This rule applies to all insurance company licensees in this state.

R590-103-3. Rules.

A. The rule on the use of clearing corporations and the federal book-entry system shall be applicable when securities are to be used for purposes of deposit with the state.

B. Securities held by a qualified transfer deposit corporation may be qualified deposits if held in accordance with the rule on the use of clearing corporations and through a qualified custodian.

C. If a declining balance security is deposited with the insurance commissioner, the company depositing the security shall report the balance to the commissioner at least on a quarterly basis. The commissioner may order that a company report these balances monthly.

D. The custodian institution holding deposits, or the state treasurer, shall report on an annual basis to the insurance company and the commissioner the amount of securities held on December 31st of each year. This report shall be submitted by January 15th of the following year. Failure to provide the report shall be grounds for appropriate action by the commissioner. The form of this report shall state the description of the securities, including CUSIP number, the interest rate, the par value, and the date of maturity, and shall satisfy the requirement of Section 31A-2-206(7).

E. Certificates of deposit may be deposited in amounts not to exceed federal insurance limits. The face amount of the certificate of deposit shall be deemed to be the market value.

F. Depository Agreement, Deposit Request and Withdrawal Request forms are available on request from the Insurance Department.

G. Deposits required under these rules shall apply to all insurer licensees in this state. A foreign company may deposit securities in its domiciliary state or another state with comparable deposit statutes or rules. The only acceptable deposits are those held for all policyholders.

R590-103-5. Separability.

If any provision of this rule or its application to any person or circumstance is found for any reason to be invalid, the remainder of the rule may not be affected thereby.

KEY: insurance
May 9, 1997 **31A-2-201**
Notice of Continuation February 14, 2002 **31A-2-206**

R590. Insurance, Administration.
R590-114. Letters of Credit.
R590-114-1. Authority.

This rule is adopted pursuant to Section 31A-2-201(3), which authorizes rules to implement the Insurance Code, and Section 31A-17-404(3), which provides for a rule to determine the form of letters of credit used as security to protect a ceding insurer in a transaction of reinsurance.

R590-114-2. Purpose and Scope.

A. The purpose of this rule is to determine, in accordance with the guidelines of Section 31A-17-404(3), the form of letter of credit security which will be acceptable to protect a ceding insurer in a transaction of reinsurance in which the alternative security factors of Section 31A-17-404(3) or 31A-17-404(6) are not present and funds of the reinsurer are retained by the ceding insurer in the form of a letter of credit. Security is maintained in order that credit for the reinsurance may be allowed the ceding insurer as either an asset or a deduction from liabilities. The allowance or disallowance of credit in reinsurance transactions may be used to determine compliance with other financial requirements of the Insurance Code.

B. This rule shall apply to all persons transacting insurance under the Utah Insurance Code.

R590-114-3. Definitions.

In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purposes of this rule:

A. "Clean" shall refer to a letter of credit which does not require the presentation of any documents other than a sight draft for a draw upon available funds.

B. "Evergreen clause" shall refer to a provision in a letter of credit which prevents expiration of the letter unless advance notice is given by the issuer.

R590-114-4. Rule.

A. Letter of Credit requirements. A letter of credit issued to comply with Section 31A-17-404(3)(c)(iii), shall meet the following requirements. Full compliance with this rule shall be accomplished if the letter of credit takes the form of the "Model Letter of Credit", which is available from the Insurance Department. Letters of credit:

1. Shall be issued by a bank or trust company which is a member of the Federal Reserve system;

2. Shall name the ceding insurer as the sole beneficiary;

3. Shall be "clean", as defined;

4. Shall be unconditional and not subject to any qualifications outside the letter of credit;

5. May not contain references to any other agreements, documents or entities;

6. Shall be irrevocable, and may not be reduced or revoked without the written consent of the beneficiary;

7. Shall contain an "evergreen clause", as defined;

8. Shall have a term of not less than one year and shall be automatically extended for not less than one additional year unless the issuer, not less than 30 days prior to expiration, notifies both the ceding insurer and the reinsurer that the letter will not be renewed;

9. Shall state that the obligation of the bank is not contingent upon reimbursement;

10. Shall state whether it is subject to the laws of this state;

11. Shall provide that all drafts drawn be presentable at a bank office in the United States;

12. May contain a boxed reference section with the name of the applicant and other appropriate information for internal identification only, not to affect the terms of the letter or the obligations of the bank.

B. Nonrenewal or withdrawal of a letter of credit. In the event of nonrenewal or withdrawal of a letter of credit, the ceding insurer shall be able to withdraw the balance of the letter of credit and place the resulting sums in trust to secure continuing obligations under the reinsurance contract until it receives a renewal letter of credit or an alternative form of security which meets the standards of this rule or the Insurance Code.

C. Inspection. A letter of credit used as security under this rule shall be readily available for inspection by the commissioner or his designee upon request.

R590-114-5. Separability.

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances may not be affected.

KEY: insurance
1994 31A-17-404
Notice of Continuation February 21, 2002

R590. Insurance, Administration.
R590-121. Rate Modification Plan Rule.
R590-121-1. Purpose.

The purpose of this rule is to establish criteria for the modification of manual rates through the application of insurer rate modification plans and to the reporting of pertinent information concerning the utilization of such plans, in order to determine whether rates developed thereunder meet the standards of the rating law. Such information may also be utilized to assist in monitoring competition in accordance with Section 31A-19a-201.

R590-121-2. Authority.

This rule is promulgated by the insurance commissioner pursuant to the authority provided under Subsections 31A-2-201(3) and (4), General Duties and Powers; Section 31A-2-203, Examinations; Section 31A-2-204, Conduct of Examinations; Section 31A-2-205, Examination Expenses; Sections 31A-19a-201, 31A-19a-202 and 31A-19a-203, Rate Standards; and Section 31A-23-302, Unfair Marketing Practices.

R590-121-3. Scope.

1. This rule applies to every authorized property and casualty insurer and every rate service organization required to file rates and supplementary information under Section 31A-19a-203.

2. This rule applies to those classes of insurance, monoline or packaged, commonly known as commercial vehicle, commercial general liability and commercial property, workers' compensation and employers' liability insurance. It does not apply to professional liability insurance, inland marine risks which, by general custom, are not written according to manual rules or rating plans, and consent-to-rate risks submitted under Subsection 31A-19a-203(6).

R590-121-4. Definitions.

For the purpose of this rule, the commissioner adopts the definitions as particularly set forth in Sections 31A-1-301 and 31A-19a-102, and in addition thereto the following:

1. "Experience rating plan" means any rating plan or system whereby a manual rate for insurance is adjusted or modified based on the past loss experience of the insured.

2. "Manual rate" means a rate, designed to apply on a generic basis to similar risks within the same market, filed with the department by an insurer or rate service organization and made part of the rating manual used by an insurer or rate service organization.

3. "Rate modification plan" means a rating plan or procedure which provides a listing of various risk characteristics or conditions and a range of modification factors which may be applied for those characteristics or conditions to the manual rate of a particular insurance risk. The effect of the modification factor is to increase (debit) or decrease (credit) the manual rate. Rate modification plans include plans commonly called Schedule Rating Plans and Individual Risk Premium Modification Plans.

R590-121-5. Rule.

1. Rate modification plans.

Rate modification plans, justified according to the standards herein, are allowed by the insurance code. The commissioner has determined that the use of unjustified rate modification plans is not reasonable, is not objective, and is unfairly discriminatory. The use of unjustified rate modifications plans in the rating of commercial property and casualty insurance risks located in Utah is prohibited. Pursuant to Subsection 31A-2-201(4), the commissioner may order the disapproval of any rate modification plan that does not establish reasonable standards for measuring probable variations in hazards, expenses, or both, as required by Subsection 31A-19a-202(3). Any insurer subject to such an order may request a hearing pursuant to Subsection 63-46b-5(1) within 30 days of the date of the order. The following elements shall be considered in determining whether or not a rate modification plan is justified:

a. rate modification plans must limit their application to maximum debits or credits of 25%. Modifications generated by loss experience or company expense experience are not subject to this limitation;

b. rate modification plans must be based only on rating characteristics not already reflected in the manual rates. The plans must clearly indicate the objective criteria to be used;

c. any rate modification plan designed to be applied simultaneously to property, liability, or vehicle coverage shall contain reasonable factors that give appropriate recognition to the distinct exposures involved in such coverages;

d. rate modification plans must provide that when a risk is rated above the manual rate (debited), an insured, applicant, or their agent or broker, upon request, will be advised by the insurer of the factors which resulted in the adverse rating so that the insured or applicant will be fairly apprized of any corrective action that might be appropriate with respect to the insurance risk;

e. An insurer's filing of changes or revisions to rate modification plans it previously filed may not result in the elimination of a debit or credit established under the prior plan for a risk currently insured by the insurer. Changes in established debits or credits for risks currently insured must be based on a change in the risk and not on a change in the provisions of a rate modification plan.

f. All initial and succeeding filing of rate modification plans must be submitted according to established filing procedures and must include a complete copy of the plan, even if only minor changes are being made. To facilitate the commissioner's analysis of the rate modification plan, the filing must also include a letter or filing memorandum from the insurer which provides: (1) a comparison of the proposed changes to any existing plan as currently filed; (2) reasons and justification for the proposed changes; and (3) a statement of the estimated number of Utah insureds affected by the changes and the estimated Utah premium dollar impact of the changes.

2. Application of rate modification plans.

The following elements shall be considered in determining whether or not the application of a rate modification plan is justified. The commissioner considers the misclassification of a risk to be a modification without justification:

a. rate modification plans must be used to acknowledge variance in risk characteristics and not merely to gain

competitive advantage or for any other purpose;

b. once a company has filed a rate modification plan, its use is mandatory. The plan must be applied uniformly in a non-discriminatory manner for all eligible classes of risk even if the application of the plan results in a zero modification or no change in a previous modification applied;

c. once a rate modification plan has been applied to a risk and a credit or debit established, no changes in the established credit or debit can be made without appropriate justification and documentation;

d. individual underwriting files must contain the specific criteria and document the particular circumstances of the risk that support each debit or credit. This documentation must be present in the file to enable the commissioner to verify compliance with this rule. Documentation may include, but is not limited to, inspection reports, photographs, agent observations and findings, insured's formal safety plans, premises evaluations, and narrative reports covering other aspects of the risk;

e. Individual underwriting files must also contain documentation of the underwriter's evaluation of the risk under the rate modification plan. This shall consist of a worksheet which describes in some fashion the risk characteristics of the filed plan and the range of credits or debits allowed for each risk characteristic. The completed worksheet shall contain the credits, debits, or both assigned to the risk characteristics by the underwriter and the sum of the credits and debits assigned. A narrative description of the underwriter's evaluation process shall be included in the worksheet. The worksheet shall list the date of the initial and any subsequent evaluation and the signature of the person(s) making the evaluation(s). A previous worksheet may be used where no change in the risk characteristics are indicated as long as a current date and signature are entered onto the worksheet.

3. Experience rating plans.

Experience rating plans shall be calculated from at least the last three years' premium and loss data. Premium and loss figures used in the calculation must be verifiable or justifiable.

4. Reporting of pertinent information.

On the request of the commissioner, an insurer authorized to write any insurance in this state to which this rule applies shall submit data to the commissioner establishing the relationship of the aggregate premiums actually charged policyholders by the insurer for each line of commercial insurance to the aggregate premium that would have been produced by the insurer's filed unmodified rates for that line of commercial insurance. A rate service organization may file the data on behalf of the insurer.

5. Rate compliance examinations.

To determine compliance with this rule the commissioner may order a rate compliance examination be made of any insurer to which this rule applies. Any examination permitted under this rule shall be conducted pursuant to Sections 31A-2-203 and 31A-2-204. All examinations and examination-related expenses shall be paid by the insurer, as provided by Section 31A-2-205.

R590-121-6. Penalties.

Any insurer that fails to comply with the provisions of this rule shall be subject to the forfeiture provisions of Section 31A-2-308.

R590-121-7. Separability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision shall not be affected thereby.

R590-121-8. Dissemination.

Each insurer or rate service organization is instructed to distribute a copy of this rule to all personnel engaged in activities requiring knowledge of this rule, and to instruct them as to its scope and operation.

KEY: insurance law

1994	**31A-2-201**
Notice of Continuation February 13, 2002	**31A-2-203**
	31A-19a-201
	31A-19a-202
	31A-19a-203
	31A-23-302

R590. Insurance, Administration.
R590-123. Additions and Deletions of Designees by Organizations.
R590-123-1. Authority.

This rule is promulgated by the insurance commissioner under Section 31A-2-201(3) to adopt rules to implement the provisions of the Utah Insurance Code, and specifically Sections 31A-23-215(2) authorizing the commissioner to establish by rule the form to be utilized by an organization when promptly reporting every change in the list of natural persons authorized to conduct business on behalf of the organization in this state.

R590-123-2. Purpose.

A. Organizations who conduct insurance transactions through natural persons in this state shall be licensed. The organization license shall identify the names of natural persons, also known as designees, authorized to act for the organization. Organizations are required to promptly report to the commissioner, in detail and form prescribed by rule, every change in their list of natural persons.

B. This rule is adopted for the purpose of stating the detail, form, and time by which an organization will either add or delete any natural person from their list of authorized designees who conduct business on behalf of the organization in this state.

R590-123-3. Rule.

A. Notice of addition or deletion of designees. All organizations shall file with the commissioner an Application For Amendment to Organization License which includes a section for changing the list of natural persons authorized to conduct business on behalf of the organization in this state. The forms necessary to effectuate such changes are available through the Insurance Department.

1. Procedure for amending an organization license:

a. Complete the application for amendment to organization license and include the information concerning designees to be added or deleted.

b. The date entered on the form will be the effective date of the change.

c. File the completed form with the department within five working days from the effective date. If the form is not filed within the five day period, the effective date of the amendment will be the date the form is received by the insurance department.

B. Fees. The organization shall pay the statutory filing fees for all Organization License applications and amendments submitted to the department.

R590-123-4. Penalties.

Any organization that fails to comply with this rule will be subject to the forfeiture provisions set forth in Sections 31A-2-308 and 31A-23-216.

R590-123-5. Separability.

If any provision of this rule or the application of it to any person is for any reason held to be invalid, the remainder of the rule and the application of any provision to other persons or circumstances will not be affected.

KEY: insurance law
1993 31A-23-215
Notice of Continuation February 26, 2002

R590. Insurance, Administration.
R590-133. Variable Contracts.
R590-133-1. Authority.

This rule is adopted pursuant to Subsection 31A-2-201(3) which authorizes rules to implement the Insurance Code and 31A-5-217.5(6) which gives the commissioner authority to regulate by rulemaking the issuance and sale of variable contracts.

R590-133-2. Definition.

A. The term "variable contract," shall mean any policy or contract which provides for life insurance or annuity benefits which may vary according to the investment experience of any separate account or accounts maintained by the insurer as to the policy or contract, as provided for in Sections 31A-5-217 and 31A-18-102.

B. "Agent," when used in this rule, shall mean any person licensed as an agent, broker or consultant under the laws of this state.

C. "Variable contract agent," when used in this rule, shall mean an agent, broker and consultant who is licensed to sell or offer to sell any variable contract.

R590-133-3. Qualification of Insurance Companies to Issue Variable Contracts.

No company may deliver or issue for delivery variable contracts within this state unless it is licensed or organized to do a variable life, annuity, or both, business in this state in accordance with Section 31A-20-106.

R590-133-4. Governance of Separate Accounts.

All separate accounts shall be governed specifically by Sections 31A-5-217; 31A-5-217.5; 31A-18-102; 31A-20-106; 31A-21-301 and 31A-22-411 and this rule. They shall be governed generally by the provisions of the code applicable to life insurance companies not explicitly exempted by the code.

R590-133-5. Required Reports.

A. Any company issuing individual variable contracts providing benefits in variable amounts shall mail to the contract holder at least once in each contract year after the first at his last address known to the company, a statement or statements reporting the investments held in the separate account.

B. The company shall submit annually to the Insurance Commissioner a statement of the business of its separate account or accounts in a form as may be prescribed by the National Association of Insurance Commissioners.

C. Any company issuing individual variable contracts shall mail to the contract holder, at least once in each contract year after the first, at his last address known to the company, a statement reporting as of a date not more than four months previous to the date of mailing:

(1) in the case of an annuity contract under which payments have not yet commenced:

(i) the number of accumulation units credited to the contract and the dollar value of a unit; or

(ii) the value of the contract holder's account; and

(2) in the case of a life insurance policy, the dollar amount of the death benefit.

R590-133-6. Foreign Companies.

If the law or rule in the place of domicile of a foreign company provides a degree of protection to the policyholders and the public which is substantially equal to that provided by this rule, the commissioner, to the extent deemed appropriate by him in his discretion, may consider compliance with the law or rule as compliance with this rule.

R590-133-7. Licensing of Agents, Brokers and Consultants.

No agent, broker or consultant may be eligible to sell or offer for sale a variable contract unless prior to making any solicitation or sale, he is licensed as a variable contract agent.

The licensing as a variable contract agent may not become effective until satisfactorily completing the following requirements:

(1) be licensed in the line of life insurance;

(2) evidence that the applicant has previously passed National Association of Security Dealers examinations series six or seven and 63. Approval of registration to take the examinations is not acceptable;

(3) evidence of being Utah approved from the National Association of Securities Dealers, Central Registration Depository;

(4) if the applicant is a non-resident, requirements of the state of domicile may be acceptable; and

(5) every application for a license as a variable contract agent shall be accompanied by the appropriate fee designated in the fee schedule adopted by the legislature.

R590-133-8. Additional Provisions Applicable to Variable Contract Agents.

A. Any person licensed in this state as a variable contract agent shall immediately report to the commissioner:

(1) any suspension or revocation of his variable contract agent's license or life insurance agent's license in any other state or territory of the United States;

(2) the imposition of any disciplinary sanction imposed upon him by any national securities exchange, or national securities association, or any federal, or state or territorial agency with jurisdiction over securities or contracts on a variable basis;

(3) any judgment or injunction entered against him on the basis of conduct deemed to have involved fraud, deceit, misrepresentation, or violation of any insurance or securities law or rule.

B. The commissioner may reject any application or suspend or revoke or refuse to renew any variable contract agent's license upon any ground that would bar the application or agent from being licensed to sell life insurance contracts in this state. The statutes governing any proceeding relating to the suspension or revocation of a life insurance agent's license shall also govern any proceeding for suspension or revocation of a variable contract agent's license.

C. Renewal of a variable contract agent's license shall follow the same procedure established for renewal of an agent's license to sell life insurance contracts in this state.

R590-133-9. Disclosure.

(A). The following information shall be furnished to an

applicant for a contract of variable life insurance prior to execution of the application:

(1) a summary description of the insurance company and its principal activities;

(2) a summary explanation in non-technical terms of the principal variable features of the contract and of the manner in which any variable benefits reflect the investment experience of a separate account;

(3) a brief description of the investment policy for the separate account with respect to the contract;

(4) a list of investments in the separate account as of a date not earlier than the end of the last year for which an annual statement has been filed with the commissioner of the state of domicile; and

(5) summary financial statements of the insurance company and the separate account based upon the last annual statement filed with the commissioner, except that for a period of four months after the filing of any annual statement the summary required may be based upon the annual statement, immediately preceding the last annual statement, filed with the commissioner.

The insurance company may include any additional information as it deems appropriate.

R590-133-10. Severability.

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provisions may not be affected.

KEY: insurance law
1994 **31A-2-201**
Notice of Continuation February 14, 2002 **31A-5-217.5**

R590. Insurance, Administration.
R590-142. Continuing Education Rule.
R590-142-1. Purpose.

The purpose of this rule is to implement the requirements of Sections 31A-23-206 and 31A-26-206.

R590-142-2. Scope.

This rule applies to all licensees under Subsection 31A-23-204(1). This rule also applies to all adjusters under Subsection 31A-26-204.

R590-142-3. Definitions.

A. Actual Class Attendance - Actual class attendance, consisting of two or more students with a live instructor. The instructor must be able to present the class material and respond to questions from the attendees.

B. Applicant - Anyone who seeks to renew an insurance license who is subject to this rule.

C. Classroom Hours - One classroom hour is at least 50 minutes of instruction. A classroom hour shall consist of actual class attendance.

D. Designated Course - A course of instruction which is approved for continuing education credit by the Insurance Department.

E. Equivalent of Classroom Hours - That amount of time which is assigned to a course by the Insurance Department to satisfy the requirements of this rule. Assignment of value shall be made on the basis of content, presentation, and format.

F. Exempt Applicant - A licensee or applicant for renewal of a license who, as of April 1, 1990, had completed 20 years of continuous licensure in good standing.

G. Home Study - An approved course of study offered to satisfy the requirements of this rule which can be completed without actual class attendance. Evidence of satisfactory completion must be verified in writing by the provider. For the purposes of this rule, satellite television broadcast and similar presentations are deemed to be home study courses.

H. Insurance Related Instruction - Those subjects designated in Subsection 4(A) through (E) of this rule and others which may, from time to time, be designated by the Insurance Department.

I. Nonprofit Provider - An organization which fits the definition of nonprofit corporation as defined in Title 16, Chapter 6.

J. Provider - Any person who offers a course, program or class for credit to an applicant to satisfy the requirements of this rule.

K. Video Tapes - Approved video tapes offered to satisfy the requirements of this rule. Video tapes may not satisfy the requirements for actual class attendance.

R590-142-4. Rule.

A. The number of hours of continuing education required to be presented biennially as a prerequisite to license renewal or reissuance shall be 12 hours. Not more than 6 hours of this requirement shall be satisfied by courses provided by insurers for whom the licensee is associated.

B. Upon renewal of a license, no continuing education hours in excess of the number required to renew the license may be carried over or applied to any subsequent licensing period, nor may a licensee repeat for credit any course of study that has been taken and credit allowed for a previous license period.

C. If the home state of a nonresident licensee is determined to have a continuing education requirement substantially similar to that of Utah, compliance with the home state's continuing education requirement may be accepted as meeting Utah's requirement.

R590-142-5. Program Requirements.

A. The Insurance Department shall:

1. approve or disapprove programs according to the standards of this rule;

2. consider applications for approval as designated courses under this section;

3. assign the number of continuing education hours to be awarded to programs that are approved; and

4. consider other related matters as the commissioner may assign.

B. Materials submitted by providers to the Insurance Department to satisfy this rule shall be deemed confidential.

C. All courses and programs must be submitted to and approved by the Insurance Department at least 14 days prior to being offered except that post approval of a course may be granted by the Insurance Department upon the licensee's submission of a written request and supporting documentation of the course attended, in accordance with Subsection E.

D. The provider seeking course and credit hours approval shall have the responsibility for providing:

1. sufficient supporting materials regarding course content and hours to permit the Insurance Department to make a determination; and

2. a Certification to the Insurance Department of Completion of Course, Exhibit D, signed by the authorized representative in charge of the course certifying licensee attendance at, and completion of, the course.

E. The following general subjects are acceptable as long as they contribute to the knowledge and professional competence of an individual licensee as an agent, broker and adjuster, and demonstrate a direct and specific application to insurance:

1. insurance, annuities, investments associated with insurance products and risk management;

2. insurance laws and rules;

3. mathematics, statistics, and probability;

4. economics;

5. law;

6. finance;

7. taxes;

8. business environment, management, or organization; and

9. ethical considerations in insurance marketing.

Areas other than those listed above may be acceptable if the licensee can demonstrate that they contribute to professional competence and otherwise meet the standards set forth in this rule. The responsibility for substantiating that a particular program meets the requirements of this rule rests solely upon the licensee.

F. Programs which do not qualify:

1. committee service or professional organizations;
2. computer training and software presentations;
3. motivation, psychology, or sales training courses;
4. securities, other than variable annuities; and
5. any program not in accordance with this rule.

G. Standards for Continuing Education Programs. In order to qualify for credit, the following standards must be met by all continuing education programs:

1. Program Development. The program must have significant intellectual or practical content to enhance and improve the insurance knowledge and professional competence of participants, and the program must be developed by persons who are qualified in the subject matter and instructional design. The program content must be up to date.

2. Program Presentations. Instructors must be qualified, both with respect to program content and teaching methods. Instructors will be considered qualified if, through formal training or experience, they have obtained sufficient knowledge to instruct the course competently. The number of participants and physical facilities must be consistent with the teaching method specified. All programs must include some means for evaluating quality.

3. Statutory Requirements. Continuing education programs must be in compliance with the Americans With Disabilities Act to enable licensees with a physical or mental disability to complete continuing education requirements.

R590-142-6. Approved Programs of Study.

A. An annual administrative assessment paid by the providers shall be used to fund the expenses for processing applications and auditing approved programs.

B. A waiver of assessment for a nonprofit provider may be considered by the Insurance Department for good cause shown. A request for a waiver of assessment by a nonprofit provider may be submitted with the application for course approval.

C. A Provider Application, Exhibit A, and Course Description form, Exhibit B, must be submitted for each individual course being submitted for credit.

D. Upon receipt of the material, the Insurance Department will approve or deny the course or program as qualifying for credit and indicate the number of hours that will be awarded for approved subjects. In cases of denial, the Insurance Department will furnish a written explanation of the reason for the action.

E. Certification of a program may be effective until substantial changes are made in the program, after which it must be resubmitted to the Insurance Department for its review and approval.

R590-142-7. Controls and Reporting.

A. Within 60 days of completion of a class, program or course of study, the provider shall furnish Certification to the Insurance Department of Completion of Course, Exhibit D, and shall furnish to all attendees successfully completing the course Certificate of Completion, Exhibit C. The provider is required to keep a copy of attendance rosters on file for a period of at least two years.

B. Biennially, on even numbered years, the licensee shall submit the original of Exhibit C to the Insurance Department along with a license renewal card and renewal fees and continuing education certification fees.

C. An exempt applicant shall submit the original of the Certificate of Exemption to the Insurance Department with a license renewal card and renewal fees. Proof supporting a request for exemption shall be attached to the Certificate of Exemption. Once an exemption has been approved by the Insurance Department no additional continuing education filing or continuing education fees are required to be made by the licensee for subsequent renewals.

D. Biennially, on even numbered years, a nonresident licensee who has complied with the continuing education requirements in the individual's home state shall provide to the Insurance Department a current letter of certification, not dated over 90 days, along with a license renewal card and renewal fees. If the nonresident licensee's home state does not have a continuing education requirement, the nonresident licensee must comply with Utah's requirement.

R590-142-8. Provider Loss of Certification.

A. The certification of a program may be suspended by the Insurance Department if it determines that:

1. the program teaching method or program content no longer meet the standards of this rule, or has been significantly changed without notice to the Insurance Department for its recertification; or

2. an individual had completed the program in accordance with the standards furnished for certification or completion of the program, when in fact the individual has not done so; or

3. individuals who have satisfactorily completed the program of study in accordance with the standards furnished for certification or completion were not so certified by the program or instructor; or

4. the instructor or provider is not qualified as per the standards of this rule, has had an insurance license revoked, or lacks education or experience in the subject matter of the proposed course; or

5. there is other good cause why certification should be suspended.

B. Reinstatement of a suspended certification will be made upon the furnishing of proof satisfactory to the Insurance Department that the conditions responsible for the suspension have been corrected.

R590-142-9. Credit for Service as Lecturer, Discussion Leader, or Speaker.

Approved instructors of continuing education courses will receive twice the number of credit hours allocated by the Insurance Department for courses they instruct. Credit for instruction of a course will be granted once for each course instructed and not for successive presentations.

R590-142-10. Penalties.

A. A licensee who fails to complete the requirements of this rule shall be subject to the penalties provided in Section 31A-23-216.

B. A provider who offers any education program or material for credit that does not comport with the requirements of this rule, or otherwise violates any provision of this rule, shall be subject to the penalties provided in Section 31A-2-308.

KEY: insurance law
October 1, 1996 **31A-23-206**
Notice of Continuation February 26, 2002 **31A-26-206**

R590. Insurance, Administration.
R590-143. Life And Health Reinsurance Agreements.
R590-143-1. Authority.

This rule is adopted and promulgated by the commissioner pursuant to Section 31A-2-201.

R590-143-2. Scope.

This rule shall apply to all domestic life and accident and health insurers and to all other licensed life and accident and health insurers which are not subject to a substantially similar rule in their domiciliary state. This rule shall also similarly apply to licensed property and casualty insurers with respect to their accident and health business. This rule does not apply to assumption reinsurance, yearly renewable term reinsurance or certain nonproportional reinsurance such as stop loss or catastrophe reinsurance.

R590-143- 3. Accounting Requirements.

A. No insurer subject to this rule may, for reinsurance ceded, reduce any liability or establish any asset in any financial statement filed with the department if, by the terms of the reinsurance agreement, in substance or effect, any of the following conditions exist:

(1) Renewal expense allowances provided or to be provided to the ceding insurer by the reinsurer in any accounting period, are not sufficient to cover anticipated allocable renewal expenses of the ceding insurer on the portion of the business reinsured, unless a liability is established for the present value of the shortfall (using assumptions equal to the applicable statutory reserve basis on the business reinsured). Those expenses include commissions, premium taxes and direct expenses including, but not limited to, billing, valuation, claims and maintenance expected by the company at the time the business is reinsured;

(2) The ceding insurer can be deprived of surplus or assets at the reinsurer's option or automatically upon the occurrence of some event, such as the insolvency of the ceding insurer, except that termination of the reinsurance agreement by the reinsurer for nonpayment of reinsurance premiums or other amounts due, such as modified coinsurance reserve adjustments, interest and adjustments on funds withheld, and tax reimbursements, is not considered to be such a deprivation of surplus or assets;

(3) The ceding insurer is required to reimburse the reinsurer for negative experience under the reinsurance agreement, except that neither offsetting experience refunds against current and prior years' losses under the agreement nor payment by the ceding insurer of an amount equal to the current and prior years' losses under the agreement upon voluntary termination of in force reinsurance by the ceding insurer shall be considered such a reimbursement to the reinsurer for negative experience. Voluntary termination does not include situations where termination occurs because of unreasonable provisions which allow the reinsurer to reduce its risk under the agreement. An example of such a provision is the right of the reinsurer to increase reinsurance premiums or risk and expense charges to excessive levels forcing the ceding company to prematurely terminate the reinsurance treaty;

(4) The ceding insurer must, at specific points in time scheduled in the agreement, terminate or automatically recapture all or part of the reinsurance ceded;

(5) The reinsurance agreement involves the possible payment by the ceding insurer to the reinsurer amounts other than from income realized from the reinsured policies. For example, it is improper for a ceding company to pay reinsurance premiums, or other fees or charges to a reinsurer which are greater than the direct premiums collected by the ceding company;

(6) The treaty does not transfer all of the significant risk inherent in the business being reinsured. The following table identifies for a representative sampling of products or type of business, the risks which are considered to be significant. For products not specifically included, the risks determined to be significant shall be consistent with this table.

Risk categories:

(a) Morbidity

(b) Mortality

(c) Lapse

This is the risk that a policy will voluntarily terminate prior to the recoupment of a statutory surplus strain experienced at issue of the policy.

(d) Credit Quality (C1)

This is the risk that invested assets supporting the reinsured business will decrease in value. The main hazards are that assets will default or that there will be a decrease in earning power. It excludes market value declines due to changes in interest rate.

(e) Reinvestment (C3)

This is the risk that interest rates will fall and funds reinvested (coupon payments or monies received upon asset maturity or call) will therefore earn less than expected. If asset durations are less than liability durations, the mismatch will increase.

(f) Disintermediation (C3)

This is the risk that interest rates rise and policy loans and surrenders increase or maturing contracts do not renew at anticipated rates of renewal. If asset durations are greater than the liability durations, the mismatch will increase. Policyholders will move their funds into new products offering higher rates. The company may have to sell assets at a loss to provide for these withdrawals.

TABLE

+ - Significant 0 - Insignificant

	RISK CATEGORY					
	a	b	c	d	e	f
Health Insurance - other than LTC/LTD*	+	0	+	0	0	0
Health Insurance - LTC/LTD*	+	0	+	+	+	0
Immediate Annuities	0	+	0	+	+	0
Single Premium Deferred Annuities	0	0	+	+	+	+
Flexible Premium Deferred Annuities	0	0	+	+	+	+
Guaranteed Interest Contracts	0	0	0	+	+	+
Other Annuity Deposit Business	0	0	+	+	+	+
Single Premium Whole Life	0	+	+	+	+	+
Traditional Non-Par Permanent	0	+	+	+	+	+
Traditional Non-Par Term	0	+	+	0	0	0
Traditional Par Permanent	0	+	+	+	+	+
Traditional Par Term	0	+	+	0	0	0
Adjustable Premium Permanent	0	+	+	+	+	+
Indeterminate Premium Permanent	0	+	+	+	+	+
Universal Life Flexible Premium	0	+	+	+	+	+
Universal Life Fixed Premium	0	+	+	+	+	+
Universal Life Fixed Premium dump-in premiums allowed	0	+	+	+	+	+

* LTC = Long Term Care Insurance

LTD = Long Term Disability Insurance

(7)(a) The credit quality, reinvestment, or disintermediation risk is significant for the business reinsured and the ceding company does not (other than for the classes of business excepted in Paragraph (7)(b)) either transfer the underlying assets to the reinsurer or legally segregate such assets in a trust or escrow account or otherwise establish a mechanism satisfactory to the commissioner which legally segregates, by contract or contract provision, the underlying assets.

(b) Notwithstanding the requirements of Paragraph (7)(a), the assets supporting the reserves for the following classes of business and any classes of business which do not have a significant credit quality, reinvestment or disintermediation risk may be held by the ceding company without segregation of such assets:

-Health Insurance - LTC/LTD
-Traditional Non-Par Permanent
-Traditional Par Permanent
-Adjustable Premium Permanent
-Indeterminate Premium Permanent
-Universal Life Fixed Premium
(no dump-in premiums allowed)

The associated formula for determining the reserve interest rate adjustment must use a formula which reflects the ceding company's investment earnings and incorporates all realized and unrealized gains and losses reflected in the statutory statement. The following is an acceptable formula: Rate = 2 (I + CG)/(X + Y - I - CG); Where: I is the net investment income CG is capital gains less capital losses X is the current year cash and invested assets plus investment income due and accrued less borrowed money. Y is the same as X but for the prior year

(8) Settlements are made less frequently than quarterly or payments due from the reinsurer are not made in cash within 90 days of the settlement date.

(9) The ceding insurer is required to make representations or warranties not reasonably related to the business being reinsured.

(10) The ceding insurer is required to make representations or warranties about future performance of the business being reinsured.

(11) The reinsurance agreement is entered into for the principal purpose of producing significant surplus aid for the ceding insurer, typically on a temporary basis, while not transferring all of the significant risks inherent in the business reinsured and, in substance or effect, the expected potential liability to the ceding insurer remains basically unchanged.

B. Notwithstanding Subsection A, an insurer subject to this rule may, with the prior approval of the commissioner, take such reserve credit or establish such asset as the commissioner may deem consistent with the Insurance Code and Rules including actuarial interpretations or standards adopted by the Department.

C.(1) Agreements entered into after the effective date of this rule which involve the reinsurance of business issued prior to the effective date of the agreements, along with any subsequent amendments thereto, shall be filed by the ceding company with the commissioner within 30 days from its date of execution. Each filing shall include data detailing the financial impact of the transaction. The ceding insurer's actuary who signs the financial statement actuarial opinion with respect to valuation of reserves shall consider this rule and any applicable actuarial standards of practice when determining the proper credit in financial statements filed with this department. The actuary should maintain adequate documentation and be prepared upon request to describe the actuarial work performed for inclusion in the financial statements and to demonstrate that such work conforms to this rule.

(2) Any increase in surplus net of federal income tax resulting from arrangements described in Subsection C(1) shall be identified separately on the insurer's statutory financial statement as a surplus item (aggregate write-ins for gains and losses in surplus in the Capital and Surplus Account, page 4 of the Annual Statement) and recognition of the surplus increase as income shall be reflected on a net of tax basis in the "Reinsurance ceded" line, page 4 of the Annual Statement as earnings emerge from the business reinsured. (For example, on the last day of calendar year N, company XYZ pays a $20 million initial commission and expense allowance to company ABC for reinsuring an existing block of business. Assuming a 34% tax rate, the net increase in surplus at inception is $13.2 million ($20 million - $6.8 million) which is reported on the "Aggregate write-ins for gains and losses in surplus" line in the Capital and Surplus account. $6.8 million (34% of $20 million) is reported as income on the "Commissions and expense allowances on reinsurance ceded" line of the Summary of Operations.

At the end of year N+1 the business has earned $4 million. ABC has paid $.5 million in profit and risk charges in arrears for the year and has received a $1 million experience refund. Company ABC's annual statement would report $1.65 million (66% of ($4 million - $1 million -$.5 million) up to a maximum of $13.2 million) on the "Commissions and expense allowance on reinsurance ceded" line of the Summary of Operations, and -$1.65 million on the "Aggregate write-ins for gains and losses in surplus" line of the Capital and Surplus account. The experience refund would be reported separately as a miscellaneous income item in the Summary of Operations.)

R590-143-4. Written Agreements.

A. No reinsurance agreement or amendment to any agreement may be used to reduce any liability or to establish any asset in any financial statement filed with the department, unless the agreement, amendment or a binding letter of intent has been duly executed by both parties no later than the "as of date" of the financial statement.

B. In the case of a letter of intent, a reinsurance agreement or an amendment to a reinsurance agreement must be executed within a reasonable period of time, not exceeding 90 days from the execution date of the letter of intent, in order for credit to be granted for the reinsurance ceded.

C. The reinsurance agreement shall contain provisions which provide that:

(1) The agreement shall constitute the entire agreement between the parties with respect to the business being reinsured thereunder and that there are no understandings between the parties other than as expressed in the agreement; and

(2) Any change or modification to the agreement shall be

null and void unless made by amendment to the agreement and signed by both parties.

R590-143-5. Existing Agreements.

Insurers subject to this rule shall reduce to zero by June 30, 1997 any reserve credits or assets established with respect to reinsurance agreements entered into prior to the effective date of this rule which, under the provisions of this rule would not be entitled to recognition of the reserve credits or assets; provided, however, that the reinsurance agreements shall have been in compliance with laws or rules in existence immediately preceding the effective date of this rule.

R590-143-6. Severability.

If a provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provisions is not effected.

KEY: insurance law
July 16, 1997 **31A-2-201**
Notice of Continuation February 19, 2002

R590. Insurance, Administration.
R590-147. Annual Statement Instructions.
R590-147-1. Authority.

This rule is promulgated pursuant to the general rulemaking authority vested in the commissioner by Section 31A-2-201, and pursuant to the specific authority of Section 31A-4-113.

R590-147-2. Scope.

This rule applies to all insurers required to file an annual statement with the commissioner in this state.

R590-147-3. Definitions.

(1) For the purpose of this rule "Insurer" includes all licensees who are licensed under Chapters 5, 7, 8, 9, 14 or 15 of Title 31A of the Utah Code.

(2) For purposes of this rule "Timely Filed" means that that the item being filed is postmarked on or before its due date or if the item is placed for delivery by a commercial delivery service, the delivery instructions are dated on or before the date the item is due to be filed and all required schedules, exhibits and documents are attached.

R590-147-4. Rule.

(1) All insurers shall file their annual statement with the department on the form adopted by the National Association of Insurance Commissioners ("NAIC"). The statement shall be prepared in accordance with the latest edition of the annual statement instructions, and the accounting practices and procedures manual published by the NAIC. Annual statement filings are not complete until all supplemental schedules, exhibits and documents are filed as required by the instructions or as otherwise indicated by this rule.

(2) All insurers authorized or recognized to do business in the State of Utah that file an annual statement and all supplemental schedules, exhibits and documents with the NAIC, are not required to file the following with the department with the filing due March 1, 2002:

(a) Actuarial Opinion;

(b) Management's Discussion and Analysis;

(c) SVO Compliance Certification; and,

(d) Annual Audited Financial Reports.

(3) The department will consider the items indicated in Subparagraphs (2)(a) through (d) of this section of the rule to be filed timely with the department if they are timely filed with the NAIC. If these items or any of the other items required to be filed with the NAIC are not filed with the NAIC by the date they are due without an approved extension or are filed late without an approved extension, the department will consider the annual statement filing with the department to be incomplete and filed late or not filed with the department and will impose sanctions permitted by law.

(4) The dates by which annual statements and supplemental schedules, exhibits, documents or electronic filings are to be made shall be the date specified in the annual statement instructions and department filing check lists. These instructions and checklists may be found on the department's website.

R590-147-5. Separability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances may not be affected thereby.

KEY: insurance
February 21, 2002 **31A-2-201**
Notice of Continuation February 21, 2002 **31A-4-113**

R590. Insurance, Administration.
R590-150. Commissioner's Acceptance of Examination Reports.
R590-150-1. Authority.

This rule is issued pursuant to the general rule making authority vested in the commissioner by Section 31A-2-201, Utah Code, and pursuant to Subsection 31A-2-203(4), Utah Code.

R590-150-2. Purpose and Scope.

The purpose of this rule is to identify the examination reports that the commissioner will accept in lieu of his own examination and report. This rule applies to all insurers licensed under Chapters 5, 9, and 14 of Title 31A of the Utah Code.

R590-150-3. Rule.

In lieu of an examination under Section 31A-2-203 of the Utah Code, of any domestic, foreign or alien insurer licensed in this state, the commissioner may accept an examination report on the company as prepared by the insurance department for the company's state of domicile or port-of-entry until January 1, 1994. Thereafter, such reports may only be accepted if: (1) the insurance department was, at the time of the examination, accredited under the National Association of Insurance Commissioners' Financial Regulation Standards and Accreditation Program; or (2) the examination is performed under the supervision of an accredited insurance department or with the participation of one or more examiners who are employed by an accredited state insurance department and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

R590-150-4. Separability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances may not be affected thereby.

KEY: insurance companies
1992 31A-2-203(4)
Notice of Continuation February 21, 2002

R590. Insurance, Administration.
R590-182. Risk Based Capital Instructions.
R590-182-1. Authority.

This rule is promulgated pursuant to the general rulemaking authority granted the commissioner by Section 31A-2-201 and the specific authority granted by Subsection 31A-17-601(6).

R590-182-2. Scope.

This rule applies to all life or disability insurers, as defined in Subsection 31A-17-601(3), and to all property and casualty insurers, as defined in Subsection 31A-17-601(4) required by Subsections 31A-17-602(1) or 31A-17-610(1)(a) to file risk based capital reports (RBC).

R590-182-3. Rule.

A. The "1999 NAIC Life Risk-Based Capital Report Including Overview and Instructions for companies as of December 31, 1999," is incorporated by reference and shall be used by life or disability insurers in preparing and filing RBC reports.

B. The "1999 NAIC Property and Casualty Risk-Based Capital Report Including Overview and Instructions for Companies as of December 31, 1999," is incorporated by reference and shall be used by property and casualty insurers in preparing and filing RBC reports.

R590-182-4. Severability.

If any provision of this rule or its application to any person or circumstance is, for any reason, held to be invalid, the remainder of this rule and its application to other persons or circumstances are not affected.

KEY: insurance
June 8, 2000 **31A-17-601(4)**
Notice of Continuation February 13, 2002

R590. Insurance, Administration.
R590-206. Privacy of Consumer Financial and Health Information Rule.
R590-206-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-202(1), 31A-2-201(2) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce Title 31A, to perform duties imposed by Title 31A and to make administrative rules to implement the provisions of Title 31A. Furthermore, Title V, Section 505 (15 United States Code (U.S.C.) 6805)) empowers the Utah Insurance Commissioner to enforce Subtitle A of Title V of the Gramm-Leach-Bliley Act of 1999(15 U.S.C. 6801 through 6820). Title V, Section 505 (15 U.S.C. 6805(b)(2)) authorizes the commissioner to issue rules to implement the requirements of Title V, Section 501(b)of the federal act. The commissioner is also authorized under Subsection 31A-23-317(3) to adopt rules implementing the requirements of Title V, Section 501(b) of the federal act.

R590-206-2. Purpose and Scope.

(1) Purpose. This rule governs the treatment of nonpublic personal health information and nonpublic personal financial information about individuals by all licensees of the Utah Insurance Department. This rule:

(a) Requires a licensee to provide notice to individuals about its privacy policies and practices;

(b) Describes the conditions under which a licensee may disclose nonpublic personal health information and nonpublic personal financial information about individuals to affiliates and nonaffiliated third parties; and

(c) Provides methods for individuals to prevent a licensee from disclosing that information.

(2) Scope. This rule applies to:

(a) Nonpublic personal financial information about individuals who obtain or are claimants or beneficiaries of products or services primarily for personal, family or household purposes from licensees. This rule does not apply to information about companies or about individuals who obtain products or services for business, commercial or agricultural purposes; and

(b) All nonpublic personal health information.

(3) Compliance. A licensee domiciled in this state that is in compliance with this rule in a state that has not enacted laws or rules that meet the requirements of Title V of the Gramm-Leach-Bliley Act (PL 102-106) may nonetheless be deemed to be in compliance with Title V of the Gramm-Leach-Bliley Act in such other state.

(4) This rule does not apply to a financial institution, securities broker or dealer, or a credit union that engages in activities or functions that do not require a license from the Utah insurance commissioner.

R590-206-3. Rule of Construction.

The examples in this rule and the sample clauses in Appendix A are not exclusive. Appendix A - Sample Clauses, of the Model Rule entitled, "Privacy of Consumer Financial and Health Information Regulation," adopted September 26, 2000, by the National Association of Insurance Commissioners, is incorporated by reference and available for inspection at the Department of Insurance and the Department of Administrative Rules. Compliance with an example or use of a sample clause, to the extent applicable, constitutes compliance with this rule.

R590-206-4. Definitions.

As used in this rule, unless the context requires otherwise:

(1) "Affiliate" means any company that controls, is controlled by or is under common control with another company.

(2)(a) "Clear and conspicuous" means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

(b) Examples.

(i) Reasonably understandable. A licensee makes its notice reasonably understandable if it:

(A) Presents the information in the notice in clear, concise sentences, paragraphs, and sections;

(B) Uses short explanatory sentences or bullet lists whenever possible;

(C) Uses definite, concrete, everyday words and active voice whenever possible;

(D) Avoids multiple negatives;

(E) Avoids legal and highly technical business terminology whenever possible; and

(F) Avoids explanations that are imprecise and readily subject to different interpretations.

(ii) Designed to call attention. A licensee designs its notice to call attention to the nature and significance of the information in it if the licensee:

(A) Uses a plain-language heading to call attention to the notice;

(B) Uses a typeface and type size that are easy to read;

(C) Provides wide margins and ample line spacing;

(D) Uses boldface or italics for key words; and

(E) In a form that combines the licensee's notice with other information, uses distinctive type size, style, and graphic devices, such as shading or sidebars.

(iii) Notices on web sites. If a licensee provides a notice on a web page, the licensee designs its notice to call attention to the nature and significance of the information in it if the licensee uses text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensures that other elements on the web site (such as text, graphics, hyperlinks or sound) do not distract attention from the notice, and the licensee either:

(A) Places the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or

(B) Places a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature and relevance of the notice.

(3) "Collect" means to obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

(4) "Commissioner" means the Utah insurance commissioner.

(5) "Company" means a corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship or similar organization.

(6)(a) "Consumer" means an individual who seeks to obtain, obtains or has obtained an insurance product or service, from a licensee that is to be used primarily for personal, family or household purposes, and about whom the licensee has nonpublic personal information, directly or through a legal representative.

(b) Examples.

(i) An individual who provides nonpublic personal information to a licensee in connection with obtaining or seeking to obtain financial, investment or economic advisory services relating to an insurance product or service is a consumer regardless of whether the licensee establishes an ongoing advisory relationship.

(ii) An applicant for insurance prior to the inception of insurance coverage is a licensee's consumer.

(iii) An individual who is a consumer of another financial institution is not a licensee's consumer solely because the licensee is acting as agent for, or provides processing or other services to, that financial institution.

(iv) An individual is a licensee's consumer if:

(A)(I) the individual is a beneficiary of a life insurance policy underwritten by the licensee;

(II) the individual is a claimant under an insurance policy issued by the licensee;

(III) the individual is an insured or an annuitant under an insurance policy or an annuity, respectively, issued by the licensee; or

(IV) the individual is a mortgagor of a mortgage covered under a mortgage insurance policy; and

(B) the licensee discloses nonpublic personal financial information about the individual to a nonaffiliated third party other than as permitted under Sections 14, 15 and 16 of this rule.

(v) Provided that the licensee provides the initial, annual and revised notices under Sections 5, 6 and 9 of this rule to the plan sponsor, group or blanket insurance policyholder or group annuity contractholder, workers' compensation plan policyholder, and further provided that the licensee does not disclose to a nonaffiliated third party nonpublic personal financial information about such an individual other than as permitted under Sections 14, 15 and 16 of this rule, an individual is not the consumer of the licensee solely because he or she is:

(A) A participant or a beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer or fiduciary;

(B) Covered under a group or blanket insurance policy or group annuity contract issued by the licensee; or

(C) A beneficiary in a workers' compensation plan.

(vi)(A) The individuals described in Subsection R590-206- 4.(6)(b)(v)(A) through (C) of this Paragraph are consumers of a licensee if the licensee does not meet all the conditions of Subsection R590-206-4.(6)(b)(v).

(B) In no event shall the individuals, solely by virtue of the status described in Subsection R590-206-4.(6)(b)(v)(A) through (C) above, be deemed to be customers for purposes of this rule.

(vii) An individual is not a licensee's consumer solely because he or she is a beneficiary of a trust for which the licensee is a trustee.

(viii) An individual is not a licensee's consumer solely because he or she has designated the licensee as trustee for a trust.

(7) "Consumer reporting agency" has the same meaning as in Section 603(f) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

(8) "Control" means:

(a) Ownership, control or power to vote 25% or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

(b) Control in any manner over the election of a majority of the directors, trustees or general partners, or individuals exercising similar functions, of the company; or

(c) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the commissioner determines.

(9) "Customer" means a consumer who has a customer relationship with a licensee.

(10)(a) "Customer relationship" means a continuing relationship between a consumer and a licensee under which the licensee provides one or more insurance products or services to the consumer that are to be used primarily for personal, family or household purposes.

(b) Examples.

(i) A consumer has a continuing relationship with a licensee if:

(A) The consumer is a current policyholder of an insurance product issued by or through the licensee; or

(B) The consumer obtains financial, investment or economic advisory services relating to an insurance product or service from the licensee for a fee.

(ii) A consumer does not have a continuing relationship with a licensee if:

(A) The consumer applies for insurance but does not purchase the insurance;

(B) The licensee sells the consumer airline travel insurance in an isolated transaction;

(C) The individual is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee;

(D) The consumer is a beneficiary or a claimant under a policy and has submitted a claim under that policy;

(E) The customer's policy is lapsed, expired, or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of 12 consecutive months, other than annual privacy notices, material required by law or rule, communication at the direction of a state or federal authority, or promotional materials;

(F) The individual is an insured or an annuitant under an insurance policy or annuity, respectively, but is not the policyholder or owner of the insurance policy or annuity; or

(G) For the purposes of this rule, the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to

that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

(11)(a) "Financial institution" means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in Section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(b) Financial institution does not include:

(i) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(ii) The Federal Agricultural Mortgage Corporation or any entity charged and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.); or

(iii) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions related to a transaction of a consumer, as long as the institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(12)(a) "Financial product or service" means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under Section (4)(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(b) Financial service includes a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

(13) "Health care" means:

(a) Preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, services, procedures, tests or counseling that:

(i) Relates to the physical, mental or behavioral condition of an individual; or

(ii) Affects the structure or function of the human body or any part of the human body, including the banking of blood, sperm, organs or any other tissue; or

(b) Prescribing, dispensing or furnishing to an individual drugs or biologicals, or medical devices or health care equipment and supplies.

(14) "Health care provider" means a physician or other health care practitioner licensed, accredited or certified to perform specified health services consistent with state law, or a health care facility.

(15) "Health information" means any information or data except age or gender, whether oral or recorded in any form or medium, created by or derived from a health care provider or the consumer that relates to:

(a) The past, present or future physical, mental or behavioral health or condition of an individual;

(b) The provision of health care to an individual; or

(c) Payment for the provision of health care to an individual.

(16)(a) "Insurance product or service" means any product or service that is offered by a licensee pursuant to the insurance laws of this state.

(b) Insurance service includes a licensee's evaluation, brokerage or distribution of information that the licensee collects in connection with a request or an application from a consumer for a insurance product or service.

(17)(a) "Licensee" means all licensed insurers, producers and other persons licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered pursuant to the insurance laws of this state.

(b) A licensee is not subject to the notice and opt out requirements for nonpublic personal financial information set forth in Sections 1 through 17 of this rule if the licensee is an employee, agent or other representative of another licensee, "the principal," and:

(i) The principal otherwise complies with, and provides the notices required by, the provisions of this rule; and

(ii) The licensee does not disclose any non-public personal financial information or a consumer or customer to any person other than the principal from or through which such consumer or customer seeks to obtain, or has obtained, a product or service or its affiliates in a manner permitted by this rule.

(c)(i) Subject to Subsection R590-206-4.(17)(b)(ii), "licensee" shall also include an unauthorized insurer that accepts business placed through a licensed surplus lines broker in this state, but only in regard to the surplus lines placements placed pursuant to Section 31A-15-103 of this state's laws.

(ii) A surplus lines broker or surplus lines insurer shall be deemed to be in compliance with the notice and opt out requirements for nonpublic personal financial information set forth in Sections 1 through 17 of this rule provided:

(A) The broker or insurer does not disclose nonpublic personal financial information of a consumer or a customer to nonaffiliated third parties for any purpose, including joint servicing or marketing under Section 14 of this rule, except as permitted by Section 15 or 16 of this rule; and

(B) The broker or insurer delivers a notice to the consumer at the time a customer relationship is established on which the following is printed in 16-point type:

PRIVACY NOTICE

"NEITHER THE U.S. BROKERS THAT HANDLED THIS INSURANCE NOR THE INSURERS THAT HAVE UNDERWRITTEN THIS INSURANCE WILL DISCLOSE NONPUBLIC PERSONAL FINANCIAL INFORMATION CONCERNING THE BUYER TO NONAFFILIATES OF THE BROKERS OR INSURERS EXCEPT AS PERMITTED BY LAW.

(18)(a) "Nonaffiliated third party" means any person except:

(i) A licensee's affiliate; or

(ii) A person employed jointly by a licensee and any company that is not the licensee's affiliate (but nonaffiliated third party includes the other company that jointly employs the person).

(b) Nonaffiliated third party includes any company that is an affiliate solely by virtue of the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities of the type described in Subsection R590-206-4.(k)(4)(H) or insurance company investment activities of the type described

in Section 4(k)(4)(I) of the federal Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H) and (I)).

(19) "Nonpublic personal information" means nonpublic personal financial information and nonpublic personal health information.

(20)(a) "Nonpublic personal financial information" means:

(i) Personally identifiable financial information; and

(ii) Any list, description or other grouping of consumers, and publicly available information pertaining to them, that is derived using any personally identifiable financial information that is not publicly available.

(b) Nonpublic personal financial information does not include:

(i) Health information;

(ii) Publicly available information, except as included on a list described in Subsection R590-206-4.(20)(a)(ii); or

(iii) Any list, description or other grouping of consumers, and publicly available information pertaining to them, that is derived without using any personally identifiable financial information that is not publicly available.

(c) Examples of lists.

(i) Nonpublic personal financial information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as account numbers.

(ii) Nonpublic personal financial information does not include any list of individuals' names and addresses that contains only publicly available information, is not derived in whole or in part using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

(21) "Nonpublic personal health information" means health information:

(a) That identifies an individual who is the subject of the information; or

(b) With respect to which there is a reasonable basis to believe that the information could be used to identify an individual.

(22)(a) "Personally identifiable financial information" means any information:

(i) A consumer provides to a licensee to obtain an insurance product or service from the licensee;

(ii) About a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer; or

(iii) The licensee otherwise obtains about a consumer in connection with providing an insurance product or service to that consumer.

(b) Examples.

(i) Information included. Personally identifiable financial information includes:

(A) Information a consumer provides to a licensee on an application to obtain an insurance product or service;

(B) Account balance information and payment history;

(C) The fact that an individual is or has been one of the licensee's customers or has obtained an insurance product or service from the licensee;

(D) Any information about the licensee's consumer if it is disclosed in a manner that indicates that the individual is or has been the licensee's consumer;

(E) Any information that a consumer provides to a licensee or that the licensee or its agent otherwise obtains in connection with collecting on a loan or servicing a loan;

(F) Any information the licensee collects through an Internet cookie, an information-collecting device from a web server; and

(G) Information from a consumer report.

(ii) Information not included. Personally identifiable financial information does not include:

(A) Health information;

(B) A list of names and addresses of customers of an entity that is not a financial institution; and

(C) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names or addresses.

(23)(a) "Publicly available information" means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from:

(i) Federal, state or local government records;

(ii) Widely distributed media; or

(iii) Disclosures to the general public that are required to be made by federal, state or local law.

(b) Reasonable basis. A licensee has a reasonable basis to believe that information is lawfully made available to the general public if the licensee has taken steps to determine:

(i) That the information is of the type that is available to the general public; and

(ii) Whether an individual can direct that the information not be made available to the general public and, if so, that the licensee's consumer has not done so.

(c) Examples.

(i) Government records. Publicly available information in government records includes information in government real estate records and security interest filings.

(ii) Widely distributed media. Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper or a web site that is available to the general public on an unrestricted basis. A web site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.

(iii) Reasonable basis.

(A) A licensee has a reasonable basis to believe that mortgage information is lawfully made available to the general public if the licensee has determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

(B) A licensee has a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if the licensee has located the telephone number in the telephone book or the consumer has informed you that the telephone number is not unlisted.

R590-206-5. Initial Privacy Notice to Consumers Required.

(1) Initial notice requirement. A licensee shall provide a

clear and conspicuous notice that accurately reflects its privacy policies and practices to:

(a) Customer. An individual who becomes the licensee's customer, not later than when the licensee establishes a customer relationship, except as provided in Subsection R590-206-5.(5) of this section; and

(b) Consumer. A consumer, before the licensee discloses any nonpublic personal financial information about the consumer to any nonaffiliated third party, if the licensee makes a disclosure other than as authorized by Sections 15 and 16.

(2) When initial notice to a consumer is not required. A licensee is not required to provide an initial notice to a consumer under Subsection R590-206-5.(1)(b) of this section if:

(a) The licensee does not disclose any nonpublic personal financial information about the consumer to any nonaffiliated third party, other than as authorized by Sections 15 and 16, and the licensee does not have a customer relationship with the consumer; or

(b) A notice has been provided by an affiliated licensee, as long as the notice clearly identifies all licensees to whom the notice applies and is accurate with respect to the licensee and the other institutions.

(3) When the licensee establishes a customer relationship.

(a) General rule. A licensee establishes a customer relationship at the time the licensee and the consumer enter into a continuing relationship.

(b) Examples of establishing customer relationship. A licensee establishes a customer relationship when the consumer:

(i) Becomes a policyholder of a licensee that is an insurer when the insurer delivers an insurance policy or contract to the consumer, or in the case of a licensee that is an insurance producer or insurance broker, obtains insurance through that licensee; or

(ii) Agrees to obtain financial, economic or investment advisory services relating to insurance products or services for a fee from the licensee.

(4) Existing customers. When an existing customer obtains a new insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, the licensee satisfies the initial notice requirements of Subsection R590-206-5.(1) of this section as follows:

(a) The licensee may provide a revised policy notice, under Section 9, that covers the customer's new insurance product or service; or

(b) If the initial, revised or annual notice that the licensee most recently provided to that customer was accurate with respect to the new insurance product or service, the licensee does not need to provide a new privacy notice under Subsection R590-206-5.(1) of this section.

(5) Exceptions to allow subsequent delivery of notice.

(a) A licensee may provide the initial notice required by Subsection R590-206-5.(1)(a) of this section within a reasonable time after the licensee establishes a customer relationship if:

(i) Establishing the customer relationship is not at the customer's election; or

(ii) Providing notice not later than when the licensee establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

(b) Examples of exceptions.

(i) Not at customer's election. Establishing a customer relationship is not at the customer's election if a licensee acquires or is assigned a customer's policy from another financial institution or residual market mechanism and the customer does not have a choice about the licensee's acquisition or assignment.

(ii) Substantial delay of customer's transaction. Providing notice not later than when a licensee establishes a customer relationship would substantially delay the customer's transaction when the licensee and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the insurance product or service.

(iii) No substantial delay of customer's transaction. Providing notice not later than when a licensee establishes a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at the licensee's office or through other means by which the customer may view the notice, such as on a web site.

(6) Delivery. When a licensee is required to deliver an initial privacy notice by this section, the licensee shall deliver it according to Section 10. If the licensee uses a short-form initial notice for non-customers according to Subsection R590-206-7.(4) the licensee may deliver its privacy notice according to Subsection R590-206-7.(4)(c).

R590-206-6. Annual Privacy Notice to Customers Required.

(1)(a) General rule. A licensee shall provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than annually during the continuation of the customer relationship. Annually means at least once in any period of 12 consecutive months during which that relationship exists. A licensee may define the 12 consecutive month period, but the licensee shall apply it to the customer on a consistent basis.

(b) Example. A licensee provides a notice annually if it defines the 12 consecutive month period as a calendar year and provides the annual notice to the customer once in each calendar year following the calendar year in which the licensee provided the initial notice. For example, if a customer opens an account on any day of year 1, the licensee shall provide an annual notice to that customer by December 31 of year two.

(2)(a) Termination of customer relationship. A licensee is not required to provide an annual notice to a former customer. A former customer is an individual with whom a licensee no longer has a continuing relationship.

(b) Examples.

(i) A licensee no longer has a continuing relationship with an individual if the individual no longer is a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee.

(ii) A licensee no longer has a continuing relationship with an individual if the individual's policy is lapsed, expired or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve 12 consecutive months, other than to provide annual privacy notices, material required by law or rule, or promotional materials.

(iii) For the purposes of this rule, a licensee no longer has a continuing relationship with an individual if the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

(iv) A licensee no longer has a continuing relationship with a customer in the case of providing real estate settlement services, at the time the customer completes execution of all documents related to the real estate closing, payment for those services has been received, or the licensee has completed all of its responsibilities with respect to the settlement, including filing documents on the public record, whichever is later.

(3) Delivery. When a licensee is required by this section to deliver an annual privacy notice, the licensee shall deliver it according to Section 10.

R590-206-7. Information to be Included in Privacy Notices.

(1) General rule. The initial, annual and revised privacy notices that a licensee provides under Sections 5, 6 and 9 shall include each of the following items of information, in addition to any other information the licensee wishes to provide, that applies to the licensee and to the consumers to whom the licensee sends its privacy notice:

(a) The categories of nonpublic personal financial information that the licensee collects;

(b) The categories of nonpublic personal financial information that the licensee discloses;

(c) The categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information, other than those parties to whom the licensee discloses information under Sections 15 and 16;

(d) The categories of nonpublic personal financial information about the licensee's former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information about the licensee's former customers, other than those parties to whom the licensee discloses information under Sections 15 and 16;

(e) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under Section 14, and no other exception in Sections 15 and 16 applies to that disclosure, a separate description of the categories of information the licensee discloses and the categories of third parties with whom the licensee has contracted;

(f) An explanation of the consumer's right under Subsection R590-206-11.(1) to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the methods by which the consumer may exercise that right at that time;

(g) Any disclosures that the licensee makes under Section 603(d)(2)(A)(iii) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosures of information among affiliates);

(h) The licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information; and

(i) Any disclosure that the licensee makes under Subsection R590-206-7.(2).

(2) Description of parties subject to exceptions. If a licensee discloses nonpublic personal financial information as authorized under Sections 15 and 16, the licensee is not required to list those exceptions in the initial or annual privacy notices required by Sections 5 and 6. When describing the categories of parties to whom disclosure is made, the licensee is required to state only that it makes disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.

(3) Examples.

(a) Categories of nonpublic personal financial information that the licensee collects. A licensee satisfies the requirement to categorize the nonpublic personal financial information it collects if the licensee categorizes it according to the source of the information, as applicable:

(i) Information from the consumer;

(ii) Information about the consumer's transactions with the licensee or its affiliates;

(iii) Information about the consumer's transactions with nonaffiliated third parties; and

(iv) Information from a consumer reporting agency.

(b) Categories of nonpublic personal financial information a licensee discloses.

(i) A licensee satisfies the requirement to categorize nonpublic personal financial information it discloses if the licensee categorizes the information according to source, as described in Subsection R590-206-7.(3)(a), as applicable, and provides a few examples to illustrate the types of information in each category. These might include:

(A) Information from the consumer, including application information, such as assets and income and identifying information, such as name, address and social security number;

(B) Transaction information, such as information about balances, payment history and parties to the transaction; and

(C) Information from consumer reports, such as a consumer's creditworthiness and credit history.

(ii) A licensee does not adequately categorize the information that it discloses if the licensee uses only general terms, such as transaction information about the consumer.

(iii) If a licensee reserves the right to disclose all of the nonpublic personal financial information about consumers that it collects, the licensee may simply state that fact without describing the categories or examples of nonpublic personal financial information that the licensee discloses.

(c) Categories of affiliates and nonaffiliated third parties to whom the licensee discloses.

(i) A licensee satisfies the requirement to categorize the affiliates and nonaffiliated third parties to which the licensee discloses nonpublic personal financial information about consumers if the licensee identifies the types of businesses in which they engage.

(ii) Types of businesses may be described by general terms only if the licensee uses a few illustrative examples of significant lines of business. For example, a licensee may use the term financial products or services if it includes appropriate examples of significant lines of businesses, such as life insurer, automobile insurer, consumer banking or securities brokerage.

(iii) A licensee also may categorize the affiliates and

nonaffiliated third parties to which it discloses nonpublic personal financial information about consumers using more detailed categories.

(d) Disclosures under exception for service providers and joint marketers. If a licensee discloses nonpublic personal financial information under the exception in Section 14 to a nonaffiliated third party to market products or services that it offers alone or jointly with another financial institution, the licensee satisfies the disclosure requirement of Subsection R590-206-7.(1)(e) of this section if it:

(i) Lists the categories of nonpublic personal financial information it discloses, using the same categories and examples the licensee used to meet the requirements of Subsection R590-206-7.(1)(b) of this section, as applicable; and

(ii) States whether the third party is:

(A) A service provider that performs marketing services on the licensee's behalf or on behalf of the licensee and another financial institution; or

(B) A financial institution with whom the licensee has a joint marketing agreement.

(e) Simplified notices. If a licensee does not disclose, and does not wish to reserve the right to disclose, nonpublic personal financial information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under Sections 15 and 16, the licensee may simply state that fact, in addition to the information it shall provide under Subsections R590-206-7.(1)(a), 7.(1)(h), 7.(1)(i), and 7.(2).

(f) Confidentiality and security. A licensee describes its policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information if it does both of the following:

(i) Describes in general terms who is authorized to have access to the information; and

(ii) States whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance with the licensee's policy. The licensee is not required to describe technical information about the safeguards it uses.

(4) Short-form initial notice with opt out notice for non-customers.

(a) A licensee may satisfy the initial notice requirements in Subsections R590-206-5.(1)(b) and Subsection R590-206-8.(3) for a consumer who is not a customer by providing a short-form initial notice at the same time as the licensee delivers an opt out notice as required in Section 8.

(b) A short-form initial notice shall:

(i) Be clear and conspicuous;

(ii) State that the licensee's privacy notice is available upon request; and

(iii) Explain a reasonable means by which the consumer may obtain that notice.

(c) The licensee shall deliver its short-form initial notice according to Section 10. The licensee is not required to deliver its privacy notice with its short-form initial notice. The licensee instead may simply provide the consumer a reasonable means to obtain its privacy notice. If a consumer who receives the licensee's short-form notice requests the licensee's privacy notice, the licensee shall deliver its privacy notice according to Section 10.

(d) Examples of obtaining privacy notice. The licensee provides a reasonable means by which a consumer may obtain a copy of its privacy notice if the licensee:

(i) Provides a toll-free telephone number that the consumer may call to request the notice; or

(ii) For a consumer who conducts business in person at the licensee's office, maintains copies of the notice on hand that the licensee provides to the consumer immediately upon request.

(5) Future disclosures. The licensee's notice may include:

(a) Categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future, but does not currently disclose; and

(b) Categories of affiliates or nonaffiliated third parties to whom the licensee reserves the right in the future to disclose, but to whom the licensee does not currently disclose, nonpublic personal financial information.

(6) Sample clauses. Sample clauses illustrating some of the notice content required by this section are found in Appendix A - Sample Clauses, of the Model Rule entitled, "Privacy of Consumer Financial and Health Information Regulation," adopted September 26, 2000, by the National Association of Insurance Commissioners. Appendix A is incorporated by reference and available for inspection at the Department of Insurance and the Department of Administrative Rules.

R590-206-8. Form of Opt Out Notice to Consumers and Opt Out Methods.

(1)(a) Form of opt out notice. If a licensee is required to provide an opt out notice under Subsection R590-206-11.(1), it shall provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out under that section. The notice shall state:

(i) That the licensee discloses or reserves the right to disclose nonpublic personal financial information about its consumer to a nonaffiliated third party;

(ii) That the consumer has the right to opt out of that disclosure; and

(iii) A reasonable means by which the consumer may exercise the opt out right.

(b) Examples.

(i) Adequate opt out notice. A licensee provides adequate notice that the consumer can opt out of the disclosure of nonpublic personal financial information to a nonaffiliated third party if the licensee:

(A) Identifies all of the categories of nonpublic personal financial information that it discloses or reserves the right to disclose, and all of the categories of nonaffiliated third parties to which the licensee discloses the information, as described in Subsections R590-206-7.(1)(b) and R590-206-7.(1)(c), and states that the consumer can opt out of the disclosure of that information; and

(B) Identifies the insurance products or services that the consumer obtains from the licensee, either singly or jointly, to which the opt out direction would apply.

(ii) Reasonable opt out means. A licensee provides a reasonable means to exercise an opt out right if it:

(A) Designates check-off boxes in a prominent position on

the relevant forms with the opt out notice;

(B) Includes a reply form together with the opt out notice;

(C) Provides an electronic means to opt out, such as a form that can be sent via electronic mail or a process at the licensee's web site, if the consumer agrees to the electronic delivery of information; or

(D) Provides a toll-free telephone number that consumers may call to opt out.

(iii) Unreasonable opt out means. A licensee does not provide a reasonable means of opting out if:

(A) The only means of opting out is for the consumer to write his or her own letter to exercise that opt out right; or

(B) The only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that the licensee provided with the initial notice but did not include with the subsequent notice.

(iv) Specific opt out means. A licensee may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.

(2) Same form as initial notice permitted. A licensee may provide the opt out notice together with or on the same written or electronic form as the initial notice the licensee provides in accordance with Section 5.

(3) Initial notice required when opt out notice delivered subsequent to initial notice. If a licensee provides the opt out notice later than required for the initial notice in accordance with Section 5, the licensee shall also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

(4) Joint relationships.

(a) If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may provide a single opt out notice. The licensee's opt out notice shall explain how the licensee will treat an opt out direction by a joint consumer, as explained in Subsection R590-206-8.(4)(e).

(b) Any of the joint consumers may exercise the right to opt out. The licensee may either:

(i) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(ii) Permit each joint consumer to opt out separately.

(c) If a licensee permits each joint consumer to opt out separately, the licensee shall permit one of the joint consumers to opt out on behalf of all of the joint consumers.

(d) A licensee may not require all joint consumers to opt out before it implements any opt out direction.

(e) Example. If John and Mary are both named policyholders on a homeowner's insurance policy issued by a licensee and the licensee sends policy statements to John's address, the licensee may do any of the following, but it shall explain in its opt out notice which opt out policy the licensee will follow:

(i) Send a single opt out notice to John's address, but the licensee shall accept an opt out direction from either John or Mary.

(ii) Treat an opt out direction by either John or Mary as applying to the entire policy. If the licensee does so and John opts out, the licensee may not require Mary to opt out as well before implementing John's opt out direction.

(iii) Permit John and Mary to make different opt out directions. If the licensee does so:

(A) It shall permit John and Mary to opt out for each other;

(B) If both opt out, the licensee shall permit both of them to notify it in a single response, such as on a form or through a telephone call; and

(C) If John opts out and Mary does not, the licensee may only disclose nonpublic personal financial information about Mary, but not about John and not about John and Mary jointly.

(5) Time to comply with opt out. A licensee shall comply with a consumer's opt out direction as soon as reasonably practicable after the licensee receives it.

(6) Continuing right to opt out. A consumer may exercise the right to opt out at any time.

(7) Duration of consumer's opt out direction.

(a) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

(b) When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal financial information that the licensee collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the licensee, the opt out direction that applied to the former relationship does not apply to the new relationship.

(8) Delivery. When a licensee is required to deliver an opt out notice by this section, the licensee shall deliver it according to Section 10.

R590-206-9. Revised Privacy Notices.

(1) General rule. Except as otherwise authorized in this rule, a licensee shall not, directly or through an affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party other than as described in the initial notice that the licensee provided to that consumer under Section 5, unless:

(a) The licensee has provided to the consumer a clear and conspicuous revised notice that accurately describes its policies and practices;

(b) The licensee has provided to the consumer a new opt out notice;

(c) The licensee has given the consumer a reasonable opportunity, before the licensee discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

(d) The consumer does not opt out.

(2) Examples.

(a) Except as otherwise permitted by Sections 14, 15 and 16, a licensee shall provide a revised notice before it:

(i) Discloses a new category of nonpublic personal financial information to any nonaffiliated third party;

(ii) Discloses nonpublic personal financial information to a new category of nonaffiliated third party; or

(iii) Discloses nonpublic personal financial information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure.

(b) A revised notice is not required if the licensee discloses nonpublic personal financial information to a new nonaffiliated third party that the licensee adequately described

in its prior notice.

(3) Delivery. When a licensee is required to deliver a revised privacy notice by this section, the licensee shall deliver it according to Section 10.

R590-206-10. Delivery.

(1) How to provide notices. A licensee shall provide any notices that this rule requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(2)(a) Examples of reasonable expectation of actual notice. A licensee may reasonably expect that a consumer will receive actual notice if the licensee:

(i) Hand-delivers a printed copy of the notice to the consumer;

(ii) Mails a printed copy of the notice to the last known address of the consumer separately, or in a policy, billing or other written communication;

(iii) For a consumer who conducts transactions electronically, posts the notice on the electronic site and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service;

(iv) For an isolated transaction with a consumer, such as the licensee providing an insurance quote or selling the consumer travel insurance, posts the notice and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular insurance product or service.

(b) Examples of unreasonable expectation of actual notice. A licensee may not, however, reasonably expect that a consumer will receive actual notice of its privacy policies and practices if it:

(i) Only posts a sign in its office or generally publishes advertisements of its privacy policies and practices; or

(ii) Sends the notice via electronic mail to a consumer who does not obtain an insurance product or service from the licensee electronically.

(3) Annual notices only. A licensee may reasonably expect that a customer will receive actual notice of the licensee's annual privacy notice if:

(a) The customer uses the licensee's web site to access insurance products and services electronically and agrees to receive notices at the web site and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the web site; or

(b) The customer has requested that the licensee refrain from sending any information regarding the customer relationship, and the licensee's current privacy notice remains available to the customer upon request.

(4) Oral description of notice insufficient. A licensee may not provide any notice required by this rule solely by orally explaining the notice, either in person or over the telephone.

(5) Retention or accessibility of notices for customers.

(a) For customers only, a licensee shall provide the initial notice required by Subsection R590-206-5.(1)(a), the annual notice required by Subsection R590-206-6.(1), and the revised notice required by Section 9 so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

(b) Examples of retention or accessibility. A licensee provides a privacy notice to the customer so that the customer can retain it or obtain it later if the licensee:

(i) Hand-delivers a printed copy of the notice to the customer;

(ii) Mails a printed copy of the notice to the last known address of the customer; or

(iii) Makes its current privacy notice available on a web site (or a link to another web site) for the customer who obtains an insurance product or service electronically and agrees to receive the notice at the web site.

(6) Joint notice with other financial institutions. A licensee may provide a joint notice from the licensee and one or more of its affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to the licensee and the other institutions. A licensee also may provide a notice on behalf of another financial institution.

(7) Joint relationships. If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may satisfy the initial, annual and revised notice requirements of Subsections R590-206-5.(1), 6.(1) and 9.(1), respectively, by providing one notice to those consumers jointly.

R590-206-11. Limits on Disclosure of Nonpublic Personal Financial Information to Nonaffiliated Third Parties.

(1)(a) Conditions for disclosure. Except as otherwise authorized in this rule, a licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party unless:

(i) The licensee has provided to the consumer an initial notice as required under Section 5;

(ii) The licensee has provided to the consumer an opt out notice as required in Section 8;

(iii) The licensee has given the consumer a reasonable opportunity, before it discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

(iv) The consumer does not opt out.

(b) Opt out definition. Opt out means a direction by the consumer that the licensee not disclose nonpublic personal financial information about that consumer to a nonaffiliated third party, other than as permitted by Sections 14, 15 and 16.

(c) Examples of reasonable opportunity to opt out. A licensee provides a consumer with a reasonable opportunity to opt out if:

(i) By mail. The licensee mails the notices required in Subsection R590-206-11.(1)(a) to the consumer and allows the consumer to opt out by mailing a form, calling a toll-free telephone number or any other reasonable means within 30 days from the date the licensee mailed the notices.

(ii) By electronic means. A customer opens an on-line account with a licensee and agrees to receive the notices required in Subsection R590-206-11.(1)(a) electronically, and the licensee allows the customer to opt out by any reasonable means within 30 days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

(iii) Isolated transaction with consumer. For an isolated transaction such as providing the consumer with an insurance

quote, a licensee provides the consumer with a reasonable opportunity to opt out if the licensee provides the notices required in Subsection R590-206-11.(1)(a) at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(2) Application of opt out to all consumers and all nonpublic personal financial information.

(a) A licensee shall comply with this section, regardless of whether the licensee and the consumer have established a customer relationship.

(b) Unless a licensee complies with this section, the licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer that the licensee has collected, regardless of whether the licensee collected it before or after receiving the direction to opt out from the consumer.

(3) Partial opt out. A licensee may allow a consumer to select certain nonpublic personal financial information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

R590-206-12. Limits on Redisclosure and Reuse of Nonpublic Personal Financial Information.

(1)(a) Information the licensee receives under an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution under an exception in Sections 15 or 16 of this rule, the licensee's disclosure and use of that information is limited as follows:

(i) The licensee may disclose the information to the affiliates of the financial institution from which the licensee received the information;

(ii) The licensee may disclose the information to its affiliates, but the licensee's affiliates may, in turn, disclose and use the information only to the extent that the licensee may disclose and use the information; and

(iii) The licensee may disclose and use the information pursuant to an exception in Sections 15 or 16 of this rule, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.

(b) Example. If a licensee receives information from a nonaffiliated financial institution for claims settlement purposes, the licensee may disclose the information for fraud prevention, or in response to a properly authorized subpoena. The licensee may not disclose that information to a third party for marketing purposes or use that information for its own marketing purposes.

(2)(a) Information a licensee receives outside of an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution other than under an exception in Sections 15 or 16 of this rule, the licensee may disclose the information only:

(i) To the affiliates of the financial institution from which the licensee received the information;

(ii) To its affiliates, but its affiliates may, in turn, disclose the information only to the extent that the licensee may disclose the information; and

(iii) To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which the licensee received the information.

(b) Example. If a licensee obtains a customer list from a nonaffiliated financial institution outside of the exceptions in Sections 15 or 16:

(i) The licensee may use that list for its own purposes; and

(ii) The licensee may disclose that list to another nonaffiliated third party only if the financial institution from which the licensee purchased the list could have lawfully disclosed the list to that third party. That is, the licensee may disclose the list in accordance with the privacy policy of the financial institution from which the licensee received the list, as limited by the opt out direction of each consumer whose nonpublic personal financial information the licensee intends to disclose, and the licensee may disclose the list in accordance with an exception in Sections 15 or 16, such as to the licensee's attorneys or accountants.

(3) Information a licensee discloses under an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under an exception in Sections 15 or 16 of this rule, the third party may disclose and use that information only as follows:

(a) The third party may disclose the information to the licensee's affiliates;

(b) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

(c) The third party may disclose and use the information pursuant to an exception in Sections 15 or 16 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

(4) Information a licensee discloses outside of an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party other than under an exception in Sections 15 or 16 of this rule, the third party may disclose the information only:

(a) To the licensee's affiliates;

(b) To the third party's affiliates, but the third party's affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

(c) To any other person, if the disclosure would be lawful if the licensee made it directly to that person.

R590-206-13. Limits on Sharing Account Number Information for Marketing Purposes.

(1) General prohibition on disclosure of account numbers. A licensee shall not, directly or through an affiliate, disclose, other than to a consumer reporting agency, a policy number or similar form of access number or access code for a consumer's policy or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing or other marketing through electronic mail to the consumer.

(2) Exceptions. R590-206-13.(1) does not apply if a licensee discloses a policy number or similar form of access number or access code:

(a) To the licensee's service provider solely in order to perform marketing for the licensee's own products or services, as long as the service provider is not authorized to directly initiate charges to the account;

(b) To a licensee who is a producer solely in order to

perform marketing for the licensee's own products or services; or

(c) To a participant in an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

(3) Examples.

(a) Policy number. A policy number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as the licensee does not provide the recipient with a means to decode the number or code.

(b) Policy or transaction account. For the purposes of this section, a policy or transaction account is an account other than a deposit account or a credit card account. A policy or transaction account does not include an account to which third parties cannot initiate charges.

R590-206-14. Exception to Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Service Providers and Joint Marketing.

(1) General rule.

(a) The opt out requirements in Sections 8 and 11 do not apply when a licensee provides nonpublic personal financial information to a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf, if the licensee:

(i) Provides the initial notice in accordance with Section 5; and

(ii) Enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in Sections 15 or 16 in the ordinary course of business to carry out those purposes.

(b) Example. If a licensee discloses nonpublic personal financial information under this section to a financial institution with which the licensee performs joint marketing, the licensee's contractual agreement with that institution meets the requirements of Paragraph (1)(b) of this subsection if it prohibits the institution from disclosing or using the nonpublic personal financial information except as necessary to carry out the joint marketing or under an exception in Sections 15 or 16 in the ordinary course of business to carry out that joint marketing.

(2) Service may include joint marketing. The services a nonaffiliated third party performs for a licensee under Subsection R590-206-14.(1) of this section may include marketing of the licensee's own products or services or marketing of financial products or services offered pursuant to joint agreements between the licensee and one or more financial institutions.

(3) Definition of "joint agreement." For purposes of this section, "joint agreement" means a written contract pursuant to which a licensee and one or more financial institutions jointly offer, endorse or sponsor a financial product or service.

R590-206-15. Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions.

(1) Exceptions for processing transactions at consumer's request. The requirements for initial notice in Subsection R590-206-5.(1)(b), the opt out in Sections 8 and 11, and service providers and joint marketing provisions in Section 14 do not apply if the licensee discloses nonpublic personal financial information as necessary to effect, administer or enforce a transaction that a consumer requests or authorizes, or to enforce a contractual obligation or other legal claim against a customer, or in connection with:

(a) Servicing or processing an insurance product or service that a consumer requests or authorizes;

(b) Maintaining or servicing the consumer's account with a licensee, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity;

(c) A proposed or actual securitization, secondary market sale (including sales of servicing rights) or similar transaction related to a transaction of the consumer; or

(d) Reinsurance or stop loss or excess loss insurance.

(2) "Necessary to effect, administer or enforce a transaction" means that the disclosure is:

(a) Required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

(b) Required, or is a usual, appropriate or acceptable method:

(i) To carry out the transaction or the product or service business of which the transaction is a part, and record, service or maintain the consumer's account in the ordinary course of providing the insurance product or service;

(ii) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;

(iii) To provide a confirmation, statement or other record of the transaction, or information on the status or value of the insurance product or service to the consumer or the consumer's agent or broker;

(iv) To accrue or recognize incentives or bonuses associated with the transaction that are provided by a licensee or any other party;

(v) To underwrite insurance at the consumer's request or for any of the following purposes as they relate to a consumer's insurance: account administration, reporting, investigating or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits, including utilization review activities, participating in research projects or as otherwise required or specifically permitted by federal or state law; or

(vi) In connection with:

(A) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited or otherwise paid using a debit, credit or other payment card, check or account number, or by other payment means;

(B) The transfer of receivables, accounts or interests therein; or

(C) The audit of debit, credit or other payment information.

R590-206-16. Other Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information.

(1) Exceptions to opt out requirements. The requirements for initial notice to consumers in Subsection R590-206-5.(1)(b), the opt out in Sections 8 and 11, and service providers and joint marketing in Section 14 do not apply when a licensee discloses nonpublic personal financial information:

(a) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;

(b)(i) To protect the confidentiality or security of a licensee's records pertaining to the consumer, service, product or transaction;

(ii) To protect against or prevent actual or potential fraud or unauthorized transactions;

(iii) For required institutional risk control or for resolving consumer disputes or inquiries;

(iv) To persons holding a legal or beneficial interest relating to the consumer; or

(v) To persons acting in a fiduciary or representative capacity on behalf of the consumer;

(c) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants and auditors;

(d) To the extent specifically permitted or required under other provisions of law and in accordance with the federal Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.), to law enforcement agencies (including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, the Securities and Exchange Commission, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21, Financial Record keeping, a state insurance authority, and the Federal Trade Commission), self-regulatory organizations or for an investigation on a matter related to public safety;

(e)(i) To a consumer reporting agency in accordance with the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); or

(ii) From a consumer report reported by a consumer reporting agency;

(f) In connection with a proposed or actual sale, merger, transfer or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal financial information concerns solely consumers of the business or unit;

(g)(i) To comply with federal, state or local laws, rules and other applicable legal requirements;

(ii) To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by federal, state or local authorities;

(iii) To respond to judicial process or government regulatory authorities having jurisdiction over a licensee for examination, compliance or other purposes as authorized by law; or

(h) For purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan or a workers' compensation policy.

(2) A licensed or admitted insurer that is the subject of a formal delinquency proceeding under Sections 31A-27-303, 31A-27-307 and 31A-27-310, are not subject to the requirements of R590-206-5.(1)(b), the opt out in Sections (8) and (11), and other notice requirements of R590-206.

(3) Example of revocation of consent. A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal financial information as permitted under Subsection R590-206-8.(6).

R590-206-17. When Authorization Required for Disclosure of Nonpublic Personal Health Information.

(1) General Rule. A licensee shall not disclose nonpublic personal health information about a consumer or customer unless an authorization is obtained from the consumer or customer whose nonpublic personal health information is sought to be disclosed.

(2) Exceptions. Nothing in this section shall prohibit, restrict or require an authorization for the disclosure of nonpublic personal health information by a licensee for the performance of the following insurance functions by or on behalf of the licensee or an affiliate of the licensee: claims administration; claims adjustment and management; detection, investigation or reporting of actual or potential fraud, misrepresentation or criminal activity; underwriting; policy placement, issuance or renewal; loss control; ratemaking and guaranty fund functions; reinsurance and excess loss insurance; risk management; case management; disease management; quality assurance; quality improvement; performance evaluation; provider credentialing verification; utilization review; peer review activities; actuarial, scientific, medical or public policy research; grievance procedures; internal administration of compliance, managerial, and information systems; policyholder service functions; auditing; reporting; database security; administration of consumer disputes and inquiries; external accreditation standards; the replacement of a group benefit plan or workers compensation policy or program; activities in connection with a sale, merger, transfer or exchange of all or part of a business or operating unit; any activity that permits disclosure without authorization pursuant to the federal Health Insurance Portability and Accountability Act privacy rules promulgated by the U.S. Department of Health and Human Services; disclosure that is required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out a transaction or providing a product or service that a consumer requests or authorizes; and any activity otherwise permitted by law, required pursuant to governmental reporting authority, or to comply with legal process. Additional insurance functions may be added with the approval of the commissioner to the extent they are necessary for appropriate performance of insurance functions and are fair and reasonable to the interest of consumers.

R590-206-18. Authorizations.

(1) A valid authorization to disclose nonpublic personal health information pursuant to Sections 17 though 21 shall be

in written or electronic form and shall contain all of the following:

(a) The identity of the consumer or customer who is the subject of the nonpublic personal health information;

(b) A general description of the types of nonpublic personal health information to be disclosed;

(c) General descriptions of the parties to whom the licensee discloses nonpublic personal health information, the purpose of the disclosure and how the information will be used;

(d) The signature of the consumer or customer who is the subject of the nonpublic personal health information or the individual who is legally empowered to grant authority and the date signed; and

(e) Notice of the length of time for which the authorization is valid and that the consumer or customer may revoke the authorization at any time and the procedure for making a revocation.

(2) An authorization for the purposes of Sections 17 through 21 shall specify a length of time for which the authorization shall remain valid, which in no event shall be for more than 24 months.

(3) A consumer or customer who is the subject of nonpublic personal health information may revoke an authorization provided pursuant to Sections 17 through 21 at any time, subject to the rights of an individual who acted in reliance on the authorization prior to notice of the revocation.

(4) A licensee shall retain the authorization or a copy thereof in the record of the individual who is the subject of nonpublic personal health information.

R590-206-19. Authorization Request Delivery.

A request for authorization and an authorization form may be delivered to a consumer or a customer as part of an opt-out notice pursuant to Section 10, provided that the request and the authorization form are clear and conspicuous. An authorization form is not required to be delivered to the consumer or customer or included in any other notices unless the licensee intends to disclose protected health information pursuant to Subsection R590-206-17.(1).

R590-206-20. Relationship to Federal Rules.

Irrespective of whether a licensee is subject to the federal Health Insurance Portability and Accountability Act privacy rule as promulgated by the U.S. Department of Health and Human Services, as published in the Federal Register November 3, 1999 (64 Fed. Reg. 59918-60065), the "federal rule", if a licensee complies with all requirements of the federal rule except for its effective date provision, the licensee shall not be subject to Sections 17 through 21.

R590-206-21. Relationship to State Laws.

Nothing in Sections 17 through 21 shall preempt or supercede existing state law related to medical records, health or insurance information privacy.

R590-206-22. Protection of Fair Credit Reporting Act.

Nothing in this rule shall be construed to modify, limit or supersede the operation of the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), and no inference shall be drawn on the basis of the provisions of this rule regarding whether information is transaction or experience information under Section 603 of that Act.

R590-206-23. Nondiscrimination.

(1) A licensee shall not unfairly discriminate against any consumer or customer because that consumer or customer has opted out from the disclosure of his or her nonpublic personal financial information pursuant to the provisions of this rule.

(2) A licensee shall not unfairly discriminate against a consumer or customer because that consumer or customer has not granted authorization for the disclosure of his or her nonpublic personal health information pursuant to the provisions of this rule.

R590-206-24. Violation.

Pursuant to Section 31A-23-302, the commissioner finds that the failure to observe the requirements of this rule is misleading to the public and individuals transacting business with licensees of the department or any person or individual who should be licensed by the department. The failure to observe the requirements of this rule is also an unreasonable restraint on competition.

Violation of any provisions of the rule will result in appropriate enforcement action by the department which may include forfeiture, penalties, and revocation of license.

R590-206-25. Severability.

If any section or portion of a section of this rule or its applicability to any person or circumstance is held invalid by a court, the remainder of the rule or the applicability of the provision to other persons or circumstances shall not be affected.

R590-206-26. Effective Date.

(1) Effective date. This rule is effective July 1, 2001.

(2)(a) Notice requirement for consumers who are the licensee's customers on the effective date. By July 1, 2001, a licensee shall provide an initial notice, as required by Section 5, to consumers who are the licensee's customers on July 1, 2001.

(b) Example. A licensee provides an initial notice to consumers who are its customers on July 1, 2001, if, by that date, the licensee has established a system for providing an initial notice to all new customers and has mailed the initial notice to all the licensee's existing customers.

(3) Two-year grandfathering of service agreements. Until July 1, 2002, a contract that a licensee has entered into with a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf satisfies the provisions of Subsection R590-206-14.(1)(a)(ii) of this rule, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal financial information, as long as the licensee entered into the agreement on or before July 1, 2000.

KEY: insurance law
February 12, 2002 **31A-2-201**
31A-2-202
31A-25-317

15 U.S.C. 6805

R614. Labor Commission, Occupational Safety and Health.
R614-1. General Provisions.
R614-1-1. Authority.

A. These rules and all subsequent revisions as approved and promulgated by the Labor Commission, Division of Occupational Safety and Health, are authorized pursuant to Title 34A, Chapter 6, Utah Occupational Safety and Health Act.

B. The intent and purpose of this chapter is stated in Section 34A-6-202 of the Act.

C. In accordance with legislative intent these rules provide for the safety and health of workers and for the administration of this chapter by the Division of Occupational Safety and Health of the Labor Commission.

R614-1-2. Scope.

These rules consist of the administrative procedures of UOSH, incorporating by reference applicable federal standards from 29 CFR 1910 and 29 CFR 1926, and the Utah initiated occupational safety and health standards found in R614-1 through R614-7. Notice has been given and rules filed as required by Subsection 34A-6-104(1)(c) and 34A-6-202(2) of the Utah Occupational Safety and Health Act and by Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

R614-1-3. Definitions.

A. "Access" means the right and opportunity to examine and copy.

B. "Act" means the Utah Occupational Safety and Health Act of 1973.

C. "Administration" means the Division of Occupational Safety and Health of the Labor Commission, also known as UOSH (Utah Occupational Safety and Health).

D. "Administrator" means the director of the Division of Occupational Safety and Health.

E. "Amendment" means such modification or change in a code, standard, rule, or order intended for universal or general application.

F. "Analysis using exposure or medical records" means any compilation of data, or any research, statistical or other study based at least in part on information collected from individual employee exposure or medical records or information collected from health insurance claims records, provided that either the analysis has been reported to the employer or no further work is currently being done by the person responsible for preparing the analysis.

G. "Commission" means the Labor Commission.

H. "Council" means the Utah Occupational Safety and Health Advisory Council.

I. "Days" means calendar days, including Saturdays, Sundays, and holidays. The day of receipt of any notice shall not be included, and the last day of the 30 days shall be included.

J. "Designated representative" means any individual or organization to whom an employee gives written authorization to exercise a right of access. For the purpose of access to employee exposure records and analyses using exposure or medical records, a recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

K. "Division" means the Division of Occupational Safety and Health, known by the acronyum of UOSH (Utah Occupational Safety and Health).

L. "Employee" includes any person suffered or permitted to work by an employer.

1. For Medical Records: "Employee" means a current employee, a former employee, or an employee being assigned or transferred to work where there will be exposure to toxic substances or harmful physical agents. In the case of deceased or legally incapacitated employee, the employee's legal representative may directly exercise all the employee's rights under this section.

M. "Employee exposure record" means a record containing any of the following kinds of information concerning employee exposure to toxic substances or harmful physical agents:

1. Environmental (workplace) monitoring or measuring, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretations of the results obtained;

2. Biological monitoring results which directly assess the absorption of a substance or agent by body systems (e.g., the level of a chemical in the blood, urine, breath, hair, fingernails, etc.) but not including results which assess the biological effect of a substance or agent;

3. Material safety data sheets; or

4. In the absence of the above, any other record which reveals the identity (e.g., chemical, common, or trade name) of a toxic substance or harmful physical agent.

N. Employee medical record

1. "Employee medical record" means a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel, or technician including:

a. Medical and employment questionnaires or histories (including job description and occupational exposures);

b. The results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including X-ray examinations and all biological monitoring);

c. Medical opinions, diagnoses, progress notes, and recommendations;

d. Descriptions of treatments and prescriptions; and

e. Employee medical complaints.

2. "Employee medical record" does not include the following:

a. Physical specimens (e.g., blood or urine samples) which are routinely discarded as a part of normal medical practice, and not required to be maintained by other legal requirements;

b. Records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier (e.g., social security number, payroll number, etc.); or

c. Records concerning voluntary employee assistance programs (alcohol, drug abuse, or personal counseling programs) if maintained separately from the employer's medical program and its records.

O. "Employer" means:

1. The state;

2. Each county, city, town, and school district in the state; and

3. Every person, firm, and private corporation, including public utilities, having one or more workers or operatives regularly employed in the same business, or in or about the same establishment, under any contract of hire.

4. For medical records: "Employer" means a current employer, a former employer, or a successor employer.

P. "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. (For example: A factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and separate notices shall be posted in each establishment to the extent that such notices have been furnished by the Administrator.

1. Establishments whose primary activity constitutes retail trade; finance, insurance, real estate and services are classified in SIC's 52-89.

2. Retail trades are classified as SIC's 52-59 and for the most part include establishments engaged in selling merchandise to the general public for personal or household consumption. Some of the retail trades are: automotive dealers, apparel and accessory stores, furniture and home furnishing stores, and eating and drinking places.

3. Finance, insurance and real estate are classified as SIC's 60-67 and include establishments which are engaged in banking, credit other than banking, security dealings, insurance and real estate.

4. Services are classified as SIC's 70-89 and include establishments which provide a variety of services for individuals, businesses, government agencies, and other organizations. Some of the service industries are: personal and business services, in addition to legal, educational, social, and cultural; and membership organizations.

5. The primary activity of an establishment is determined as follows: For finance, insurance, real estate, and services establishments, the value of receipts or revenue for services rendered by an establishment determines its primary activity. In establishments with diversified activities, the activities determined to account for the largest share of production, sales or revenue will identify the primary activity. In some instances these criteria will not adequately represent the relative economic importance of each of the varied activities. In such cases, employment or payroll should be used in place of normal basis for determining the primary activity.

Q. "Exposure" or "exposed" means that an employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.) and includes past exposure and potential (e.g., accidental or possible) exposure, but does not include situations where the employer can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.

R. "First aid" is any one-time treatment, and any follow-up visit for the purpose of observation of minor scratches, cuts, burns, splinters, and so forth, which do not ordinarily require the attention of a physician. Such one-time treatment, and follow-up visit for the purpose of observation, is considered first aid even though provided by a physician or trained personnel provided that the records comply with R614-1-7.B. and are readily available to the Administrator or his representatives, by direct contact, telephone, or mail.

S. "Hearing" means a proceeding conducted by the commission.

T. "Imminent danger" means a danger exists which reasonably could be expected to cause an occupational disease, death, or serious physical harm immediately, or before the danger could be eliminated through enforcement procedures under this chapter.

U. "Inspection" means any inspection of an employer's factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a complaint filed under R614-1-6.K.1. and 3., any re-inspection, follow-up inspection, accident investigation or other inspection conducted under Section 34A-6-301 of the Act.

V. "Medical treatment" includes treatment administered by a physician or trained personnel under the standing orders of a physician. Medical treatment does not include first aid treatment even though provided by a physician or trained personnel.

W. "National consensus standard" means any occupational safety and health standard or modification:

1. Adopted by a nationally recognized standards-producing organization under procedures where it can be determined by the administrator and division that persons interested and affected by the standard have reached substantial agreement on its adoption;

2. Formulated in a manner which affords an opportunity for diverse views to be considered; and

3. Designated as such a standard by the Secretary of the United States Department of Labor.

X. "Person" means the general public, one or more individuals, partnerships, associations, corporations, legal representatives, trustees, receivers, and the state and its political subdivisions.

Y. "Publish" means publication in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

Z. "Record" means any item, collection, or grouping of information regardless of the form or process by which it is maintained (e.g., paper document, microfiche, microfilm, X-ray film, or automated data processing.)

AA. "Recordable occupational injuries and illnesses" means any occupational injuries or illnesses which result in:

1. Fatalities, regardless of the time between the injury and death, or the length of the illness;

2. Lost time cases, other than fatalities, that result in lost time; or

3. Nonfatal cases without lost time which result in transfer to another job or termination of employment, or require medical

treatment (other than first aid), or involve loss of consciousness or restriction of work or motion. This category also includes any diagnosed occupational illnesses which are reported to the employer but are not classified as fatalities or lost time case.

BB. "Safety and Health Officer" means a person authorized by the Utah Occupational Safety and Health Administration to conduct inspections.

CC. "Secretary" means the Secretary of the United States Department of Labor.

DD. "Specific written consent" means written authorization containing the following:

1. The name and signature of the employee authorizing the release of medical information;

2. The date of the written authorization;

3. The name of the individual or organization that is authorized to release the medical information;

4. The name of the designated representative (individual or organization) that is authorized to receive the released information;

5. A general description of the medical information that is authorized to be released;

6. A general description of the purpose for the release of medical information; and

7. A date or condition upon which the written authorization will expire (if less than one year).

8. A written authorization does not operate to authorize the release of medical information not in existence on the date of written authorization, unless this is expressly authorized, and does not operate for more than one year from the date of written authorization.

9. A written authorization may be revoked in writing prospectively at any time.

EE. "Standard" means an occupational health and safety standard or group of standards which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary to provide safety and healthful employment and places of employment.

FF. "Toxic substance" or "harmful physical agent" means any chemical substance, biological agent (bacteria, virus, fungus, etc.) or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo and hyperbaric pressure, etc) which:

1. Is regulated by any Federal law or rule due to a hazard to health;

2. Is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) (See R614-103-20B Appendix B);

3. Has yielded positive evidence of an acute or chronic health hazard in human, animal, or other biological testing conducted by, or known to the employer; or

4. Has a material safety data sheet available to the employer indicating that the material may pose a hazard to human health.

GG. "Variance" means a special, limited modification or change in the code or standard applicable to the particular establishment of the employer or person petitioning for the modification or change.

HH. "Workplace" means any place of employment.

R614-1-4. Incorporation of Federal Standards.

A. General Industry Standards.

1. Sections 29 CFR 1910.21 to 1910.999 and 1910.1000 through the end of part 1910 of the July 1, 2001, edition are incorporated by reference.

2. 29 CFR 1908, July 1, 2001, is incorporated by reference.

3. 29 CFR 1904, July 1, 2001, is incorporated by reference.

B. Construction Standards.

1. Section 29 CFR 1926.20 through the end of part 1926, of the July 1, 2001, edition is incorporated by reference.

R614-1-5. Adoption and Extension of Established Federal Safety Standards and State of Utah General Safety Orders.

A. Scope and Purpose.

1. The provisions of this rule adopt and extend the applicability of: (1) established Federal Safety Standards, (2) R614, and (3) Workers' Compensation Coverage, as in effect July 1, 1973 and subsequent revisions, with respect to every employer, employee and employment within the boundaries of the State of Utah, covered by the Utah Occupational Safety and Health Act of 1973.

2. All standards and rules including emergency and/or temporary, promulgated under the Federal Occupational Safety and Health Act of 1970 shall be accepted as part of the Standards, Rules and Regulations under the Utah Occupational Safety and Health Act of 1973, unless specifically revoked or deleted.

3. All employers will provide workers' compensation benefits as required in Section 34A-2-201.

4. Any person, firm, company, corporation or association employing minors must comply fully with all orders and standards of the Labor Division of the Commission. UOSH standards shall prevail in cases of conflict.

B. Construction Work.

Federal Standards, 29 CFR 1926 and selected applicable sections of R614 are accepted covering every employer and place of employment of every employee engaged in construction work of:

1. New construction and building;

2. Remodeling, alteration and repair;

3. Decorating and painting;

4. Demolition; and

5. Transmission and distribution lines and equipment erection, alteration, conversion or improvement.

C. Reporting Requirements.

1. Each employer shall investigate or cause to be investigated all work-related injuries and occupational diseases and any sudden or unusual occurrence or change of conditions that pose an unsafe or unhealthful exposure to employees.

2. Each employer shall within 12 hours of occurrence, notify the Division of Utah Occupational Safety and Health of the Commission of any work-related fatalities, of any disabling, serious, or significant injury and of any occupational disease incident. Call (801) 530-6901 or one of the individuals on the following personnel list.

TABLE 1

LABOR COMMISSION
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

BAGLEY, Jay W. (Administrator)
Kaysville, Utah 84037
543-1369

ADAMS, William W. Jr.
Park City, Utah 84060
649-4309

BURNS, Tori L.
Salt Lake City, Utah 84102
364-6673

ANDERSON, Neil A.
Kaysville, Utah 84037
544-2791

KING, Daniel L.
Lake Point, Utah 84074
250-6781

3. Each employer shall file a report with the Commission within seven days after the occurrence of an injury or occupational disease, after the employer's first knowledge of the occurrence, or after the employee's notification of the same, on forms prescribed by the Commission, of any work-related fatality or any work-related injury or occupational disease resulting in medical treatment, loss of consciousness or loss of work, restriction of work, or transfer to another job. Each employer shall file a subsequent report with the Commission of any previously reported injury or occupational disease that later resulted in death. The subsequent report shall be filed with the Commission within seven days following the death or the employer's first knowledge or notification of the death. No report is required for minor injuries, such as cuts or scratches that require first-aid treatment only, unless the treating physician files, or is required to file the physician's initial report of work injury or occupational disease with the Commission. Also, no report is required for occupational diseases which manifest after the employee is no longer employed by the employer with which the exposure occurred, or where the employer is not aware of an exposure occasioned by the employment which results in an occupational disease as defined by Section 34A-3-103.

4. Each employer shall provide the employee with a copy of the report submitted to the Commission. The employer shall also provide the employee with a statement, as prepared by the Commission, of his rights and responsibilities related to the industrial injury or occupational disease.

5. Each employer shall maintain a record in a manner prescribed by the Commission of all work-related injuries and all occupational diseases resulting in medical treatment, loss of consciousness, loss of work, restriction of work, or transfer to another job.

6. Tools, equipment, materials or other evidence that might pertain to the cause of such accident shall not be removed or destroyed until so authorized by the Labor Commission or one of its Compliance Officers.

7. No person shall remove, displace, destroy, or carry away any safety devices or safeguards provided for use in any place of employment, or interfere in any way with the use thereof by other persons, or interfere in any method or process adopted for the protection of employees. No employee shall refuse or neglect to follow and obey reasonable orders that are issued for the protection of health, life, safety, and welfare of employees.

D. Employer, Employee Responsibility.

1. It shall be the duty and responsibility of any employee upon entering his or her place of employment, to examine carefully such working place and ascertain if the place is safe, if the tools and equipment can be used with safety, and if the work can be performed safely. After such examination, it shall be the duty of the employee to make the place, tools, or equipment safe. If this cannot be done, then it becomes his or her duty to immediately report the unsafe place, tools, equipment, or conditions to the foreman or supervisor.

2. Employees must comply with all safety rules of their employer and with all the Rules and Regulations promulgated by UOSH which are applicable to their type of employment.

3. Management shall inspect or designate a competent person or persons to inspect frequently for unsafe conditions and practices, defective equipment and materials, and where such conditions are found to take appropriate action to correct such conditions immediately.

4. Supervisory personnel shall enforce safety regulations and issue such rules as may be necessary to safeguard the health and lives of employees. They shall warn all employees of any dangerous condition and permit no one to work in an unsafe place, except for the purpose of making it safe.

E. General Safety Requirements.

1. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

2. Body protection: Clothing which is appropriate for the work being done should be worn. Loose sleeves, tails, ties, lapels, cuffs, or similar garments which can become entangled in moving machinery shall not be worn where an entanglement hazard exists. Clothing saturated or impregnated with flammable liquids, corrosive substances, irritant, oxidizing agents or other toxic materials shall be removed and shall not be worn until properly cleaned.

3. General. Wrist watches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

4. Safety Committees. It is recommended that a safety committee comprised of management and employee representatives be established. The committee or the individual member of the committee shall not assume the responsibility of management to maintain and conduct a safe operation. The duties of the committee should be outlined by management, and may include such items as reviewing the use of safety apparel, recommending action to correct unsafe conditions, etc.

5. No intoxicated person shall be allowed to go into or loiter around any operation where workers are employed.

6. No employee shall carry intoxicating liquor into a place of employment, except that the place of employment shall be engaged in liquor business and this is a part of his assigned duties.

7. Employees who do not understand or speak the English language shall not be assigned to any duty or place where the lack or partial lack of understanding or speaking English might adversely affect their safety or that of other employees.

8. Good housekeeping is the first law of accident prevention and shall be a primary concern of all supervisors and workers. An excessively littered or dirty work area will not be tolerated as it constitutes an unsafe, hazardous condition of

employment.

9. Emergency Posting Required.

a. Good communications are necessary if a fire or disaster situation is to be adequately coped with. A system for alerting and directing employees to safety is an essential step in a safety program.

b. A list of telephone numbers or addresses as may be applicable shall be posted in a conspicuous place so the necessary help can be obtained in case of emergency. This list shall include:

(1) Responsible supervision (superintendent or equivalent)
(2) Doctor
(3) Hospital
(4) Ambulance
(5) Fire Department
(6) Sheriff or Police

10. Lockouts and Tagging.

a. Where there is any possibility of machinery being started or electrical circuits being energized while repairs or maintenance work is being done, the electrical circuits shall be locked open and/or tagged and the employee in charge (the one who places the lock) shall keep the key until the job is completed or he is relieved from the job, such as by shift change or other assignment. If it is expected that the job may be assigned to other workers, he may remove his lock provided the supervisor or other workers apply their lock and tag immediately. Where there is danger of machinery being started or of steam or air creating a hazard to workers while repairs on maintenance work is being done, the employee in charge shall disconnect the lines or lock and tag the main valve closed or blank the line on all steam driven machinery, pressurized lines or lines connected to such equipment if they could create a hazard to workers.

b. After tagging and lockout procedures have been applied, machinery, lines, and equipment shall be checked to insure that they cannot be operated.

c. If locks and tags cannot be applied, conspicuous tags made of nonconducting material and plainly lettered, "EMPLOYEES WORKING" followed by the other appropriate wording, such as "Do not close this switch" shall be used.

d. When in doubt as to procedure, the worker shall consult his supervisor concerning safe procedure.

11. Safety-Type hooks shall be used wherever possible.

12. Emergency Showers, Bubblers, and Eye Washers.

a. Readily accessible, well marked, rapid action safety showers and eye wash facilities must be available in areas where strong acid, caustic or highly oxidizing or irritating chemicals are being handled. (This is not applicable where first aid practices specifically preclude flushing with running water.)

b. Showers should have deluge type heads, easily accessible, plainly marked and controlled by quick opening valves of the type that stay open. The valve handle should be equipped with a pull chain, rope, etc., so the blinded employee will be able to more easily locate the valve control. In addition, it is recommended that the floor platform be so constructed to actuate the quick opening valve. The shower should be capable of supplying large quantities of water under moderately high pressure. Blankets should be located so as to be reasonably accessible to the shower area.

c. All safety equipment should be inspected and tested at regular intervals, preferably daily and especially during freezing weather, to make sure it is in good working condition at all times.

13. Grizzlies Over Chutes, Bins and Tank Openings.

a. Employees shall be furnished with and be required to use approved type safety harnesses and shall be tied off securely so as to suspend him above the level of the product before entering any bin, chute or storage place containing material that might cave or run. Cleaning and barring down in such places shall be started from the top using only bars blunt on one end or having a ring type or D handhold.

b. Employees shall not work on top of material stored or piled above chutes, drawholes or conveyor systems while material is being withdrawn unless protected.

c. Chutes, bins, drawholes and similar openings shall be equipped with grizzlies or other safety devices that will prevent employees from falling into the openings.

d. Bars for grizzly grids shall be so fitted that they will not loosen and slip out of place, and the operator shall not remove a bar temporarily to let large rocks through rather than to break them.

R614-1-6. Personal Protective Equipment.

A. When no other method or combination of methods can be provided to prevent employees from becoming exposed to toxic dusts, fumes, gases, flying particles or other objects, dangerous rays or burns from heat, acid, caustic, or any other hazard of a similar nature, the employer must provide each worker with the necessary personal protection equipment, such as respirators, goggles, gas masks, certain types of protective clothing, etc. Provision must also be made to keep all such equipment in good, sanitary working condition at all times.

B. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

C. Except when, in the opinion of the Administrator, their use creates a greater hazard, life lines and safety harnesses shall be provided for and used by workers engaged in window washing, in securing or shifting thrustouts, inspecting or working on overhead machines supporting scaffolds or other high rigging, and on steeply pitched roofs. Similarly, they shall be provided for and used by all exposed to the hazard of falling, and by workmen on poles workers or steel frame construction more than ten (10) feet above solid ground or above a temporary or permanent floor or platform.

D. Every life line and safety harness shall be inspected by the superintendent or his authorized representative and the worker before it is used and at least once a week while continued in use.

E. Wristwatches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

R614-1-7. Inspections, Citations, and Proposed Penalties.

A. The Utah Occupational Safety and Health Act (Title 34A, Chapter 6) requires, that every employer covered under the Act furnish to his employees employment and a place of employment which are free from recognized hazards that are likely to cause death or serious physical harm to his employees.

The Act also requires that employers comply with occupational safety and health standards promulgated under the Act, and that employees comply with standards, rules, regulations and orders issued under the Act applicable to employees actions and conduct. The Act authorizes the Utah Occupational Safety and Health Division to conduct inspections, and to issue citations and proposed penalties for alleged violations. The Act, under Section 34A-6-301, also authorizes the Administrator to conduct inspections and to question employers and employees in connection with research and other related activities. The Act contains provisions for adjudication of violations, periods prescribed for the abatement of violations, and proposed penalties by the Labor Commission, if contested by an employer or by an employee or authorized representative of employees, and for a judicial review. The purpose of R614-1-7 is to prescribe rules and general policies for enforcement of the inspection, citations, and proposed penalty provisions of the Act. Where R614-1-7 sets forth general enforcement policies rather than substantive or procedural rules, such policies may be modified in specific circumstances where the Administrator or his designee determines that an alternative course of action would better serve the objectives of the Act.

B. Posting of notices; availability of Act, regulations and applicable standards.

1. Each employer shall post and keep posted notices, to be furnished by the Administrator, informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact their employer or the office of the Administrator. Such notices shall be posted by the employer in each establishment in a conspicuous place where notices to employees are customarily posted. Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.

2. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation communications, and electric, gas and sanitary services, the notices required shall be posted at the location where employees report each day. In the case of employees who do not usually work at, or report to, a single establishment, such as traveling salesman, technicians, engineers, etc., such notices shall be posted in accordance with the requirements of R614-1-7.Q.

3. Copies of the Act, all regulations published under authority of Section 34A-6-202 and all applicable standards will be available at the office of the Administrator. If an employer has obtained copies of these materials, he shall make them available upon request to any employee or his authorized representative.

4. Any employer failing to comply with the provisions of this Part shall be subject to citation and penalty in accordance with the provisions of Sections 34A-6-302 and 34A-6-307 of the Act.

C. Authority for Inspection.

1. Safety and Health Officers of the Division are authorized to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee; and to review records required by the Act and regulations published in R614-1-7 and 8, and other records which are directly related to the purpose of the inspection.

2. Prior to inspecting areas containing information which has been classified as restricted by an agency of the United States Government in the interest of national security, Safety and Health Officers shall obtain the appropriate security clearance.

D. Objection to Inspection.

1. Upon a refusal to permit the Safety and Health Officer, in exercise of his official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any employer, owner, operator, agent, or employee, in accordance with R614-1-7.B. and C. or to permit a representative of employees to accompany the Safety and Health Officer during the physical inspection of any workplace in accordance with R614-1-7.G. the Safety and Health Officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records or interview concerning which no objection is raised.

2. The Safety and Health Officer shall endeavor to ascertain the reason for such refusal, and shall immediately report the refusal and the reason therefor to the Administrator. The Administrator shall take appropriate action, including compulsory process, if necessary.

3. Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the Administrator circumstances exist which make such preinspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include (but are not limited to):

a. When the employers past practice either implicitly or explicitly puts the Administrator on notice that a warrantless inspection will not be allowed:

b. When an inspection is scheduled far from the local office and procuring a warrant prior to leaving to conduct the inspection would avoid, in case of refusal of entry, the expenditure of significant time and resources to return to the office, obtain a warrant and return to the work-site;

c. When an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

4. For purposes of this section, the term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent. Ex parte inspection warrants shall be the preferred form of compulsory process in all circumstances where compulsory process is relied upon to seek entry to a workplace under this section.

E. Entry not a Waiver.

Any permission to enter, inspect, review records, or question any person, shall not imply a waiver of any cause of action, citation, or penalty under the Act. Safety and Health Officers are not authorized to grant such waivers.

F. Advance notice of Inspections.

1. Advance notice of inspections may not be given, except in the following instances:

a. In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible.

b. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection.

c. Where necessary to assure the presence of the employer or representative of the employer and employees or the appropriate personnel needed to aid the inspection; and

d. In other circumstances where the Administrator determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

2. In the instances described in R614-1-7.F.1., advance notice of inspections may be given only if authorized by the Administrator, except that in cases of imminent danger, advance notice may be given by the Safety and Health Officer without such authorization if the Administrator is not immediately available. Where advance notice is given, it shall be the employer's responsibility to notify the authorized representative of the employees of the inspection, if the identity of such representatives is known to the employer. (See R614-1-7.H.2. as to instances where there is no authorized representative of employees.) Upon the request of the employer, the Safety and Health Officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the Safety and Health Officer with the identity of such representatives and with such other information as is necessary to enable him promptly to inform such representatives of the inspection. A person who fails to comply with his responsibilities under this paragraph, may be subject to citation and penalty under Sections 34A-6-302 and 34A-6-307 of the Act. Advance notice in any of the instances described in R614-1-7.F. shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in cases of imminent danger and other unusual circumstances.

3. The Act provides in Subsection 34A-6-307(5)(b) conditions for which advanced notice can be given and the penalties for not complying.

G. Conduct of Inspections.

1. Subject to the provisions of R614-1-7.C., inspections shall take place at such times and in such places of employment as the Administrator or the Safety and Health Officer may direct. At the beginning of an inspection, Safety and Health Officers shall present their credentials to the owner, operator, or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in R614-1-7.C. which they wish to review. However, such designations of records shall not preclude access to additional records specified in R614-1-7.C.

2. Safety and Health Officers shall have authority to take environmental samples and to take photographs or video recordings related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment. (See R614-1-7.I. on trade secrets.) As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges, and other similar devices to employees in order to monitor their exposures.

3. In taking photographs and samples, Safety and Health Officers shall take reasonable precautions to insure that such actions with flash, spark-producing, or other equipment would not be hazardous. Safety and Health Officers shall comply with all employer safety and health rules and practices at the establishment being inspected, and shall wear and use appropriate protective clothing and equipment.

4. The conduct of inspections shall preclude unreasonable disruption of the operations of the employer's establishment.

5. At the conclusion of an inspection, the Safety and Health Officer shall confer with the employer or his representative and informally advise him of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the Safety and Health Officer any pertinent information regarding conditions in the workplace.

H. Representative of employers and employees.

1. Safety and Health Officer shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Safety and Health Officer during the physical inspection of any workplace for the purpose of aiding such inspection. A Safety and Health Officer may permit additional employer representative and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the Safety and Health Officer during each phase of an inspection if this will not interfere with the conduct of the inspection.

2. Safety and Health Officers shall have authority to resolve all disputes as to who is the representative authorized by the employer and the employees for purpose of this Part. If there is no authorized representative of employees, or if the Safety and Health Officer is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

3. The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the Safety and Health Officer, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Safety and Health Officer during the inspection.

4. Safety and Health Officers are authorized to deny the right of accompaniment under this Part to any person whose conduct interferes with a fair and orderly inspection. The right

of accompaniment in areas containing trade secrets shall be subject to the provisions of R614-1-7.I.3. With regard to information classified by an agency of the U.S. Government in the interest of national security, only persons authorized to have access to such information may accompany a Safety and Health Officer in areas containing such information.

I. Trade secrets.

1. Section 34A-6-306 of the Act provides provisions for trade secrets.

2. At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the Safety and Health Officer has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, and environmental samples, shall be labeled "confidential-trade secret" and shall not be disclosed except in accordance with the provisions of Section 34A-6-306 of the Act.

3. Upon the request of an employer, any authorized representative of employees under R614-1-7.H. in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is not such representative or employee, the Safety and Health Officer shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

J. Consultation with employees.

Safety and Health Officers may consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act which he has reason to believe exists in the workplace to the attention of the Safety and Health Officer.

K. Complaints by employees.

1. Any employee or representative of employees who believe that a violation of the Act exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the Administrator or to a Safety and Health Officer. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy of the notice shall be provided the employer or his agent by the Administrator or Safety and Health Officer no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the Administrator.

2. If upon receipt of such notification the Administrator determines that the complaint meets the requirements set forth in R614-1-7.K.1., and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable. Inspections under this Part shall not be limited to matters referred to in the complaint.

3. Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Safety and Health Officer, in writing, of any violation of the Act which they have reason to believe exists in such workplace. Any such notice shall comply with requirements of R614-1-7.K.1.

4. Section 34A-6-203 of the Act provides protection for employees while engaged in protected activities.

L. Inspection not warranted; informal review.

1. If the Administrator determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under K, he shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the Administrator. The Administrator, at his discretion, may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral view presented, the Administrator shall affirm, modify, or reverse the determination of the previous decision and again furnish the complaining party and the employer written notification of his decision and the reasons therefor.

2. If the Administrator determines that an inspection is not warranted because the requirements of R614-1-7.K.1. have not been met, he shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of R614-1-7.K.1.

M. Imminent danger.

Whenever a Safety and Health Officer concludes, on the basis of an inspection, that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm before the imminence of such danger can be eliminated through the enforcement procedures of the Act, he shall inform the affected employees and employers of the danger, that he is recommending a civil action to restrain such conditions or practices and for other appropriate citations of proposed penalties which may be issued with respect to an imminent danger even though, after being informed of such danger by the Compliance Officer, the employer immediately eliminates the imminence of the danger and initiates steps to abate such danger.

N. Citations.

1. The Administrator shall review the inspection report of the Safety and Health Officer. If, on the basis of the report the Administrator believes that the employer has violated a requirement of Section 34A-6-201 of the Act, of any standard, rule, or order promulgated pursuant to Section 34A-6-202 of the Act, or of any substantive rule published in this chapter, shall issue to the employer a citation. A citation shall be issued even though, after being informed of an alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violations. Any citation shall be issued with reasonable promptness after termination of the inspection. No citation may be issued after the expiration of 6 months following the occurrence of any violation.

2. Any citation shall describe with particularity the nature of the alleged violation, including a reference to the provision of the Act, standard, rule, regulations, or order alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violations.

3. If a citation is issued for an alleged violation in a request for inspection under R614-1-7.K.1. or a notification of violation under R614-1-7.K.3., a copy of the citation shall also be sent to the employee or representative of employees who made such request or notification.

4. Following an inspection, if the Administrator determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under R614-1-7.K.1.or a notification of violation under R614-1-7.K.3., the informal review procedures prescribed in R614-1-7.L.1. shall be applicable. After considering all views presented, the Administrator shall either affirm, order a re-inspection, or issue a citation if he believes that the inspection disclosed a violation. The Administrator shall furnish the complaining party and the employer with written notification of his determination and the reasons therefor.

5. Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless the citation is affirmed by the Commission.

O. Petitions for modification of abatement date.

1. An employer may file a petition for modification of abatement date when he has made a good faith effort to comply with the abatement requirements of the citation, but such abatement has not been completed because of factors beyond his reasonable control.

2. A petition for modification of abatement date shall be in writing and shall include the following information.

a. All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

b. The specific additional abatement time necessary in order to achieve compliance.

c. The reasons such additional time is necessary, including the unavailability, of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

d. All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

e. A certification that a copy of the petition has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with paragraph R614-1-7.O.3.a. and a certification of the date upon which such posting and service was made.

3. A petition for modification of abatement date shall be filed with the Administrator who issued the citation no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

a. A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. The petition shall remain posted for a period of ten (10) days. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.

b. Affected employees or their representatives may file an objection in writing to such petition with the aforesaid Administrator. Failure to file such objection within ten (10) working days of the date of posting of such petition or of service upon an authorized representative shall constitute a waiver of any further right to object to said petition.

c. The Administrator or his duly authorized agent shall have authority to approve any petition for modification of abatement date filed pursuant to paragraphs R614-1-7.O.2. and 3. Such uncontested petitions shall become final orders pursuant to Subsection 34A-6-303(1) of the Act.

d. The Administrator or his authorized representative shall not exercise his approval power until the expiration of ten (10) days from the date of the petition was posted or served pursuant to paragraphs R614-1-7.O.3.a. and b. by the employer.

4. Where any petition is objected to by the affected employees, the petition, citation, and any objections shall be forwarded to the Administrator per R614-1-7.O.3.b. Upon receipt the Administrator shall schedule and notify all interested parties of a formal hearing before the Administrator or his authorized representative(s). Minutes of this hearing shall be taken and become public records of the Commission. Within ten (10) days after conclusion of the hearing, a written opinion by the Administrator will be made, with copies to the affected employees or their representatives, the affected employer and to the Commission.

P. Proposed penalties.

1. After, or concurrent with, the issuance of a citation and within a reasonable time after the termination of the inspection, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of the proposed penalty under Section 34A-6-307 of the Act, or that no penalty is being proposed. Any notice of proposed penalty shall state that the proposed penalty shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notice, the employer notifies the Adjudication Division in writing that he intends to contest the citation or the notification of proposed penalty before the Commission.

2. The Administrator shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of the penalty with respect to the size of the business, of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations, in accordance with the provisions of Section 34A-6-307 of the Act.

3. Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of such alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Penalties shall not be proposed for violations which have no direct or immediate relationship to safety or health.

Q. Posting of citations.

1. Upon receipt of any citation under the Act, the employer shall immediately post such citation, or copy thereof, unedited, at or near each place of alleged violation referred to in the citation occurred, except as hereinafter provided. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged

violation, such citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employees are engaged in activities which are physically dispersed (see R614-1-7.B.), the citation may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location (see R614-1-7.B.2.), the citation must be posted at the location from which the employees commence their activities. The employer shall take steps to ensure that the citation is not altered, defaced, or covered by other material.

2. Each citation or a copy thereof, shall remain posted until the violation has been abated, or for 3 working days which ever is later. The filing by the employer of a notice of intention to contest under R614-1-7.R. shall not affect his posting responsibility unless and until the Commission issues a final order vacating the citation.

3. An employer, to whom a citation has been issued, may post a notice in the same location where such citation is posted indicating that the citation is being contested before the Commission, such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

4. Any employer failing to comply with the provisions of R614-1-7.Q.1. and 2. shall be subject to citation and penalty in accordance with the provisions of Section 34A-6-307 of the Act.

R. Employer and employee hearings before the Commission.

1. Any employer to whom a citation or notice of proposed penalty has been issued, may under Section 34A-6-303 of the Act, notify the Adjudication Division in writing that the employer intends to contest such citation or proposed penalty before the Commission. Such notice of intention to contest must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty. Every notice of intention to contest shall specify whether it is directed to the citation or to the proposed penalty, or both. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

2. An employee or representative of employee of an employer to whom a citation has been issued may, under Section 34A-6-303(3) of the Act, file a written notice with the Adjudication Division alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable. Such notice must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty or notice that no penalty is being proposed. The Adjudication Division shall handle such notice in accordance with the rules of procedure prescribed by the Commission.

S. Failure to correct a violation for which a citation has been issued.

1. If an inspection discloses that an employer has failed to correct an alleged violation for which a citation has been issued within the period permitted for its correction, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of such failure and of the additional penalty proposed under Section 34A-6-307 of the Act by reason of such failure. The period for the correction of a violation for which a citation has been issued shall not begin to run until the entry of a final order of the Commission in the case of any review proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.

2. Any employer receiving a notification of failure to correct a violation and of proposed additional penalty may, under Section 34A-6-303(3) of the Act, notify the Adjudication Division in writing that he intends to contest such notification or proposed additional penalty before the Commission. Such notice of intention to contest shall be postmarked within 30 days of receipt by the employer of the notification of failure to correct a violation and of proposed additional penalty. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

3. Each notification of failure to correct a violation and of proposed additional penalty shall state that it shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notification, the employer notifies the Adjudication Division in writing that he intends to contest the notification or the proposed additional penalty before the Commission.

T. Informal conferences.

At the request of an affected employer, employee, or representative of employees, the Administrator may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The Administrator shall provide in writing the reasons for any settlement of issues at such conferences. If the conference is requested by the employer, an affected employee or his representative shall be afforded an opportunity to participate, at the discretion of the Administrator. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Administrator. Any party may be represented by counsel at such conference. No such conference or request for such conference shall operate as a stay of any 30 day period for filing a notice of intention to contest as prescribed in R614-1-7.R.

R614-1-8. Recording and Reporting Occupational Injuries and Illnesses.

A. The rules in this section implement Sections 34A-6-108 and 34A-6-301(3) of the Act. These sections provide for record-keeping and reporting by employers covered under the Act, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation, and analysis of occupational safety and health statistics. Regardless of size or type of operation, accidents and fatalities must be reported to UOSH in accordance with the requirements of R614-1-5.C.

B. Exceptions to Recordkeeping and Reporting Requirements.

1. Small Employers. An employer who had no more than ten (10) employees at any time during the calendar year immediately preceding the current calendar year need not comply with any of the requirements of this part except the following:

a. Obligation to report under R614-1-5.C. concerning fatalities or accidents; and

b. Obligation to maintain a log of occupational injuries and illnesses under R614-1-8.C. and to make reports under R614-1-8.N. upon being notified in writing by the Commission's Statistics Section that the employer has been selected to participate in a statistical survey of occupational injuries and illnesses.

2. Employers who are engaged in farming operations, having 10 or fewer employees are not subject to the Act, including the provisions of this part.

3. Establishments Classified in Standard Industrial Classification Codes (SIC) 52-89, (except 52-54, 70, 75, 76, 79 and 80.) An employer whose establishment is classified in SIC's 52-89, (excluding 52-54, 70, 75, 76, 79 and 80) need not comply, for such establishment, with any of the requirements of this part except the following:

a. Obligation to report under R614-1-5.C. concerning fatalities or serious injury.

b. Obligation to maintain a log of occupational injuries and illnesses under R614-1-8.K. and L. upon being notified in writing by the federal Bureau of Labor Statistics that the employer has been selected to participate in a statistical survey of occupational injuries and illnesses; and

c. Those employers who engage in activities classified as high risk industries (i.e., a real estate establishment engaged in construction activities) must maintain records on the High Risk portions of their operations.

C. Log and summary of occupational injuries and illness.

1. Each employer shall maintain in each establishment a log and summary of all recordable occupational injuries and illnesses for that establishment, except that under the circumstances described in R614-1-8.C.2. an employer may maintain the log and summary of occupational injuries and illnesses at a place other than the establishment. Each employer shall enter all recordable occupational injury and illness on the log and summary as early as practicable but no later than 6 working days after receiving information that a recordable case has occurred. For this purpose, the federal OSHA Form No. 200 or any private equivalent form may be used. OSHA Form No. 200 or its equivalent shall be completed in the detail provided in the form and instructions contained in OSHA Form No. 200. If an equivalent of OSHA Form No. 200 is used, such as a printout from data-processing equipment, the information shall be as readable and comprehensible to a person not familiar with the data-processing equipment as the OSHA Form No. 200 itself.

2. Any employer may maintain the log and summary of occupational injuries and illnesses at a place other than the establishment or by means of data-processing equipment, or both, under the following circumstances:

a. There is available at the place where the log and summary is maintained sufficient information to complete the log to a date within 6 working days after receiving information that a recordable case has occurred, as required by R614-1-8.C.

b. At each of the employer's establishments, there is available a copy of the log and summary which reflects separately the injury and illness experience of that establishment complete and current to a date within 45 calendar days.

D. Period covered.

Records shall be established on a calendar year basis.

E. Supplementary record.

In addition to the log and summary of occupational injuries and illnesses provided for under R614-1-8.C.1., each employer shall have available for inspection at each establishment within 6 working days after receiving information that a recordable case has occurred, a supplementary record for that establishment. The record shall be completed in the detail prescribed in the instructions accompanying federal OSHA Form No. 101. Workers' compensation, insurance, or other reports are acceptable alternative records if they contain the information required by the federal OSHA Form No. 101. If no acceptable alternative record is maintained for other purposes, Federal OSHA Form No. 101 shall be used or the necessary information shall be otherwise maintained.

F. Annual Summary.

1. Each employer shall post an annual summary of occupational injuries and illnesses for each establishment. This summary shall consist of a copy of the year's totals from the form OSHA Form No. 200 and the following information from that form: calendar year covered, company name, establishment address, certification signature, title, and date. An OSHA Form No. 200 shall be used in presenting the summary. If no injuries or illnesses occurred in the year, zeros must be entered in the totals line, and the form must be posted.

2. The summary shall be completed by February 1 beginning with calendar year 1979. The summary of 1977 calendar year's occupational injuries and illnesses shall be posted on OSHA form No. 102.

3. Each employer or the officer or employee of the employer who supervises the preparation of the log and summary of occupational injuries and illnesses, shall certify that the annual summary of occupational injuries and illnesses is true and complete. The certification shall be accomplished by affixing the signature of the employer, or the officer or employee of the employer who supervises the preparation of the annual summary of occupational injuries and illnesses, at the bottom of the last page of the log and summary or by appending a separate statement to the annual summary certifying that the annual summary is true and complete.

4. Each employer shall post a copy of the establishment's summary in each establishment in the same manner that notices are required to be posted under R614-1-7.B.1. The summary covering the previous calendar year shall be posted no later than February 1, and shall remain in place until March 1. For employees who do not primarily report or work at a single establishment, or who do not report to any fixed establishment on a regular basis, employers shall satisfy this posting requirement by presenting or mailing a copy of the summary portion of the log and summary during the month of February of the following year to each such employee who receives pay during that month. For multi-establishment employers where operations have closed down in some establishments during the calendar year, it will not be necessary to post summaries for those establishments.

a. Failure to post a copy of the establishment's annual summary may result in the issuance of citations and assessment of penalties pursuant to Sections 34A-6-302 and 34A-6-307 of the Act.

G. Retention of records.

1. Records provided for in R614-1-8.A.,E., and F. (including OSHA Form No. 200 and its predecessor OSHA Forms No. 100 and No. 102) shall be retained in each establishment for 5 years following the end of the year to which they relate.

2. Preservation of records.

a. This section applies to each employer who makes, maintains or has access to employee exposure records or employee medical records.

b. "Employee exposure record" means a record of monitoring or measuring which contains qualitative or quantitative information indicative of employee exposures to toxic materials or harmful physical agents. This includes both individual exposure records and general research or statistical studies based on information collected from exposure records.

c. "Employee medical record" means a record which contains information concerning the health status of an employee or employees exposed or potentially exposed to toxic materials or harmful physical agents. These records may include, but are not limited to:

(1) The results of medical examinations and tests;

(2) Any opinions or recommendations of a physician or other health professional concerning the health of an employee or employees; and

(3) Any employee medical complaints relating to workplace exposure. Employee medical records include both individual medical records and general research or statistical studies based on information collected from medical records.

d. Preservation of records. Each employer who makes, maintains, or has access to employee exposure records or employee medical records shall preserve these records.

e. Availability of records. The employer shall make available, upon request to the Administrator, or a designee, and to the Director of the Division of Health, or a designee, all employee exposure records and employee medical records for examination and copying.

H. Access to records.

1. Records provided for in R614-1-8.A.,E., and F. shall be available for inspection and copying by Compliance Officers during any occupational safety and health inspection provided for under R614-1-7 and Section 34A-6-301 of the Act.

2. The log and summary of all recordable occupational injuries and illnesses (OSHA No. 200) (the log) provided for in R614-1-8.A. shall, upon request, be made available by the employer to any employee, former employee, and to their representatives for examination and copying in a reasonable manner and at reasonable times. The employee, former employee, and their representatives shall have access to the log for any establishment in which the employee is or has been employed.

3. Nothing in this section shall be deemed to preclude employees and employee representatives from collectively bargaining to obtain access to information relating to occupational injuries and illnesses in addition to the information made available under this section.

4. Access to the log provided under this section shall pertain to all logs retained under requirements of R614-1-8.G.

I. Reporting of fatality or accidents. (Refer to Utah Occupational Safety and Health Rule, R614-1-5.C.)

J. Falsification or failure to keep records or reports.

1. Section 34A-6-307 of the Act provides penalties for false information and recordkeeping.

2. Failure to maintain records or file reports required by this part, or in the details required by forms and instructions issued under this part, may result in the issuance of citations and assessment of penalties as provided for in Sections 34A-6-302 and 34A-6-307 of the Act.

K. Change of ownership.

Where an establishment has changed ownership, the employer shall be responsible for maintaining records and filing reports only for that period of the year during which he owned or operated such establishment. However, in the case of any change in ownership, the employer shall preserve those records, if any, of the prior ownership which are required to be kept under this Part. These records shall be retained at each establishment to which they relate, for the period or remainder thereof, required under R614-1-8.G.

L. Petitions for record-keeping exceptions.

1. Submission of petition. Any employer who wishes to maintain records in a manner different from that required by this part may submit a petition containing the information specified in R614-1-8.L.3. the Bureau of Labor Statistics of the U.S. Department of Labor.

2. Opportunity for comment. Affected employees or their representatives shall have an opportunity to submit written data, views, or arguments concerning the petition to the Administrator within 10 working days following the receipt of notice under R614-1-8.L.3.e.

3. Contents of petition. A petition filed under R614-1-8.L.1. shall include:

a. The name and address of the applicant;

b. The address of the places or employment involved.

c. Specifications of the reasons for seeking relief;

d. A description of the different record-keeping procedures which are proposed by the applicant;

e. A statement that the applicant has informed his affected employees of the petition by giving a copy thereof to them or to their authorized representative and by posting a statement giving a summary of the petition and by other appropriate means. A statement posted pursuant to this subparagraph shall be posted in each establishment in the same manner that notices are required to be posted under R614-1-7.B. The applicant shall also state that he has informed his affected employees of their rights under R614-1-8.L.2.

f. In the event an employer has more than one establishment he shall submit a list of the locations and the number of establishments in the state.

4. Additional notice, conferences.

a. In addition to the actual notice provided for in R614-1-8.L.3.e., the Administrator may provide such additional notice of the petition as he may deem appropriate.

b. The Administrator may also afford an opportunity to interested parties for informal conference or hearing concerning the petition.

5. Action. After review of the petition, and of any comments submitted in regard thereto, and upon completion of any necessary appropriate investigation concerning the petition, if the Administrator finds that the alternative procedure

proposed will not hamper or interfere with the purposes of the Act and will provide equivalent information, he may grant the petition subject to such conditions as he may determine appropriate.

6. Publication. Whenever any relief is granted to an applicant under this Act, notice of such relief, and the reasons therefore, shall be published in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act. The U.S. Department of Labor shall have been consulted and approval given prior to the granting of relief by the Administrator.

7. Revocation. Whenever any relief under this rule is sought to be revoked for any failure to comply with the conditions thereof, and opportunity for informal hearing or conference shall be afforded to the employers and affected employees, or their representatives. Except in cases of willfulness or where public safety or health requires otherwise, before the commencement of any such informal proceeding, the employer shall:

a. Be notified in writing of the facts or conduct which may warrant the action; and

b. Be given an opportunity to demonstrate or achieve compliance.

8. Compliance after submission of a petition or any delay by the Administrator, in acting upon a petition shall not relieve any employer from any obligation to comply with this Part. However, the Administrator shall give notice of the denial of any petition within a reasonable time.

M. Description of statistical program.

1. Section 34A-6-108 of the Act directs the Administrator to develop and maintain a program of collection, compilation, and analysis of occupational safety and health statistics. The program shall consist of periodic surveys of occupational injuries and illnesses.

2. The sample design encompasses probability procedures, detailed stratification by industry and size, and a systematic selection within Stratification. Stratification and sampling will be carried out in order to provide the most efficient sample for eventual state estimates. Some industries will be sampled more heavily than others depending on the injury rate level based on previous experience. The survey should produce adequate estimates for most four-digit Standard Industrial Classification (SIC) industries in manufacturing and for three-digit classification (SIC) in non-manufacturing. Full cooperation with the U. S. Department of Labor in statistical programs is intended.

N. Duties of employers.

1. Upon receipt of an Occupational Injuries and Illnesses Survey Form, the employer shall promptly complete the form in accordance with the instructions contained therein, and return it in accordance with the aforesaid instructions.

2. Employers of employees engaged in physically dispersed operations such as occur in construction, installation, repair or service activities who do not report to any fixed establishment on a regular basis but are subject to common supervision may satisfy the provisions of R614-1-8.C., E., and G. with respect to such employees by:

a. Maintaining the required records for each operation or group of operations which is subject to common supervision (field superintendent, field supervisor, etc.) in an established central place;

b. Having the address and telephone number of the central place available at each work-site; and

c. Having personnel available at the central place during normal business hours to provide information from the records maintained there by telephone and by mail.

R614-1-9. Rules of Practice for Temporary or Permanent Variance from the Utah Occupational Safety and Health Standards. (Also Adopted and Published as Chapter XXIII of the Utah Occupational Safety and Health Field Operations Manual.)

A. Scope.

1. This rule contains Rules of Practice for Administrative procedures to grant variances and other relief under Section 34A-6-202 of the Act. General information pertaining to employer-employee rights, obligations and procedures are included.

B. Application for, or petition against Variances and other relief.

1. The applicable parts of Section 34A-6-202 of the Act shall govern application and petition procedure.

2. Any employer or class of employers desiring a variance from a standard must make a formal written request including the following information:

a. The name and address of applicant;

b. The address of the place or places of employment involved;

c. A specification of the standard or portion thereof from which the applicant seeks a variance;

d. A statement by the applicant, supported by opinions from qualified persons having first-hand knowledge of the facts of the case, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefore;

e. A statement of the steps the applicant has taken and will take, with specific dates where appropriate, to protect employees against the hazard covered by the existing standard;

f. A statement of when the applicant expects to be able to comply with the standard and of what steps he has taken and will take, with specific dates where appropriate, to come into compliance with the standards (applies to temporary variances);

g. A statement of the facts the applicant would show to establish that (applies to newly promulgated standards);

(1) The applicant is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

(2) He is taking all available steps to safeguard his employees against the hazards covered by the standards; and

(3) He has an effective program for coming into compliance with the standard as quickly as practicable;

h. Any request for a hearing, as provided in this rule;

i. A statement that the applicant has informed his affected employees of the application for variance by giving a copy thereof to their authorized representative, posting a summary statement of the application at the place or places where notices to employees are normally posted specifying where a copy may

be examined; and

j. A description of how affected employees have been informed of their rights to petition the Administrator for a hearing.

3. The applicant shall designate the method he will use to safeguard his employees until a variance is granted or denied.

4. Whenever a proceeding on a citation or a related issue concerning a proposed penalty or period of abatement has been contested and is pending before an Administrative Law Judge or any subsequent review under the Administrative Procedures Act, until the completion of such proceeding, the Administrator may deny a variance application on a subject or an issue concerning a citation which has been issued to the employer.

C. Hearings.

1. The Administrator may conduct hearings upon application or petition in accordance with Section 34A-6-202(4) of the Act if:

a. Employee(s), the public, or other interested groups petition for a hearing; or

b. The Administrator deems it in the public or employee interest.

2. When a hearing is considered appropriate, the Administrator shall set the date, time, and place for such hearing. He shall provide timely notification to the applicant for variance and the petitioners. In the notice of hearing to the applicant, the applicant will be directed to notify his employees of the hearing.

3. Notice of hearings shall be published in the Administrative Rulemaking Bulletin. This shall include a statement that the application request may be inspected at the UOSH Division Office.

4. A copy of the Notification of Hearing along with other pertinent information shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

D. Inspection for Variance Application.

1. A variance inspection will be required by the Administrator or his designee prior to final determination of either acceptance or denial.

2. A variance inspection is a single purpose, pre-announced, non-compliance inspection and shall include employee or employer representative participation or interview where necessary.

E. Interim order.

1. The purpose of an interim order is to permit an employer to proceed in a non-standard operation while administrative procedures are being completed. Use of this interim procedure is dependent upon need and employee safety.

2. Following a variance inspection, and after determination and assurance that employees are to be adequately protected, the Administrator may immediately grant, in writing, an interim order. To expedite the effect of the interim order, it may be issued at the work-site by the Administrator. The interim order will remain in force pending completion of the administrative promulgation action and the formal granting or denying of a temporary/permanent variance as requested.

F. Decision of the Administrator.

1. The Administrator may deny the application if:

a. It does not meet the requirements of paragraph R614-1-8.B.;

b. It does not provide adequate safety in the workplace for affected employees; or

c. Testimony or information provided by the hearing or inspection does not support the applicant's request for variance as submitted.

2. Letters of notification denying variance applications shall be sent to the applicant, and will include posting requirements to inform employees, affected associations, and employer groups.

a. A copy of correspondence related to the denial request shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

b. The letter of denial shall be explicit in detail as to the reason(s) for such action.

3. The Administrator may grant the request for variances provided that:

a. Data supplied by the applicant, the UOSHA inspection and information and testimony affords adequate protection for the affected employee(s);

b. Notification of approval shall follow the pattern described in R614-1-9.C.2. and 3.;

c. Limitations, restrictions, or requirements which become part of the variance shall be documented in the letter granting the variance.

4. The Administrator's decision shall be deemed final subject to Section 34A-6-202(6).

G. Recommended Time Table for Variance Action.

1. Publication of agency intent to grant a variance. This includes public comment and hearing notification in the Utah Administrative Rulemaking Bulletin: within 30 days after receipt.

2. Public comment period: within 20 days after publication.

3. Public hearing: within 30 days after publication

4. Notification of U.S. Department of Labor Regional Administrator for OSHA: 10 days after agency publication of intent.

5. Final Order: 120 days after receipt of variance application if publication of agency intent is made.

6. Rejection of variance application without publication of agency intent: 20 days after receipt of application.

a. Notification of U.S. Department of Labor Regional Administrator for OSHA: 20 days after receipt of application.

H. Public Notice of Granted Variances, Tolerances, Exemptions, and Limitations.

1. Every final action granting variance, exemption, or limitation under this rule shall be published as required under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, and the time table set forth in R614-1-9.G.

I. Acceptance of federally Granted Variances.

1. Where a variance has been granted by the U.S. Department of Labor, Occupational Safety and Health Administration, following Federal Promulgation procedures, the Administrator shall take the following action:

a. Compare the federal OSHA standard for which the variance was granted with the equivalent UOSH standard.

b. Identify possible application in Utah.

c. If the UOSH standard under consideration for application of the variance has exactly or essentially the same

intent as the federal standard and there is the probability of a multi-state employer doing business in Utah, then the Administrator shall accept the variance (as federally accepted) and promulgate it for Utah under the provisions of Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

d. If the variance has no apparent application to Utah industry, or to a multi-state employer in Utah, or if it conflicts with Utah Legislative intent, or established policy or procedure, the federal variance shall not be accepted. In such case, the Regional Administrator will be so notified.

J. Revocation of a Variance.

1. Any variance (temporary or permanent) whether approved by the state or one accepted by State based on Federal approval, may be revoked by the Administrator if it is determined through on-site inspection that:

a. The employer is not complying with provisions of the variance as granted;

b. Adequate employee safety is not afforded by the original provisions of the variance; or

c. A more stringent standard has been promulgated, is in force, and conflicts with prior considerations given for employee safety.

2. A federally approved national variance may be revoked by the state for a specific work-site or place of employment within the state for reasons cited in R614-1-9.J.1. Such revocations must be in writing and give full particulars and reasons prompting the action. Full rights provided under the law, such as hearings, etc., must be afforded the employer.

3. Normally, permanent variances may be revoked or changed only after being in effect for at least six months.

K. Coordination.

1. All variances issued by the Administrator will be coordinated with the U.S. Department of Labor, OSHA to insure consistency and avoid improper unilateral action.

R614-1-10. Discrimination.

A. General.

1. The Act provides, among other things, for the adoption of occupational safety and health standards, research and development activities, inspections and investigations of work places, and record keeping requirements. Enforcement procedures initiated by the Commission; review proceedings as required by Title 63, Chapter 46b, Administrative Procedures Act; and judicial review are provided by the Act.

2. This rule deals essentially with the rights of employees afforded under section 34A-6-203 of the Act. Section 34A-6-203 of the Act prohibits reprisals, in any form, against employees who exercise rights under the Act.

3. The purpose is to make available in one place interpretations of the various provisions of Section 34A-6-203 of the Act which will guide the Administrator in the performance of his duties thereunder unless and until otherwise directed by authoritative decisions of the courts, or concluding, upon reexamination of an interpretation, that it is incorrect.

B. Persons prohibited from discriminating.

Section 34A-6-203 defines employee protections under the Act, because the employee has exercised rights under the Act. Section 34A-6-103(11) of the Act defines "person". Consequently, the prohibitions of Section 34A-6-203 are not limited to actions taken by employers against their own employees. A person may be chargeable with discriminatory action against an employee of another person. Section 34A-6-203 would extend to such entities as organizations representing employees for collective bargaining purposes, employment agencies, or any other person in a position to discriminate against an employee. (See, Meek v. United States, F. 2d 679 (6th Cir., 1943); Bowe v. Judson C. Burnes, 137 F 2d 37 (3rd Cir., 1943).)

C. Persons protected by section 34A-6-203.

1. All employees are afforded the full protection of Section 34A-6-203. For purposes of the Act, an employee is defined in Section 34A-6-103(6). The Act does not define the term "employ". However, the broad remedial nature of this legislation demonstrates a clear legislative intent that the existence of an employment relationship, for purposes of Section 34A-6-203, is to be based upon economic realities rather than upon common law doctrines and concepts. For a similar interpretation of federal law on this issue, see, U.S. v. Silk, 331 U.S. 704 (1947); Rutherford Food Corporation v. McComb, 331 U.S. 722 (1947).

2. For purposes of Section 34A-6-203, even an applicant for employment could be considered an employee. (See, NLRB v. Lamar Creamery, 246 F. 2d 8 (5th Cir., 1957).) Further, because Section 34A-6-203 speaks in terms of any employee, it is also clear that the employee need not be an employee of the discriminator. The principal consideration would be whether the person alleging discrimination was an "employee" at the time of engaging in protected activity.

3. In view of the definitions of "employer" and "employee" contained in the Act, employees of a State or political subdivision thereof would be within the coverage of Section 34A-6-203.

D. Unprotected activities distinguished.

1. Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The proscriptions of Section 34A-6-203 apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in activities protected by the Act does not automatically render him immune from discharge or discipline for legitimate reasons, or from adverse action dictated by non-prohibited considerations. (See, NLRB v. Dixie Motor Coach Corp., 128 F. 2d 201 (5th Cir., 1942).)

2. To establish a violation of Section 34A-6-203, the employee's engagement in protected activity need not be the sole consideration behind discharge or other adverse action. If protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place "but for" engagement in protected activity, Section 34A-6-203 has been violated. (See, Mitchell v. Goodyear Tire and Rubber Co., 278 F. 2d 562 (8th Cir., 1960); Goldberg v. Bama Manufacturing, 302 F. 2d 152 (5th Cir., 1962).) Ultimately, the issue as to whether a discharge was because of protected activity will have to be determined on the basis of the facts in the particular case.

E. Specific protections - complaints under or related to the Act.

1. Discharge of, or discrimination against an employee

because the employee has filed "any complaint under or related to this Act" is prohibited by Section 34A-6-203. An example of a complaint made "under" the Act would be an employee request for inspection pursuant to Section 34A-6-301(6). However, this would not be the only type of complaint protected by Section 34A-6-203. The range of complaints "related to" the Act is commensurate with the broad remedial purposes of this legislation and the sweeping scope of its application, which entails the full extent of the commerce power. ((See Cong. Rec., vol. 116 P. 42206 December 17, 1970).)

2. Complaints registered with Federal agencies which have the authority to regulate or investigate occupational safety and health conditions are complaints "related to" this Act. Likewise, complaints made to State or local agencies regarding occupational safety and health conditions would be "related to" the Act. Such complaints, however, must relate to conditions at the workplace, as distinguished from complaints touching only upon general public safety and health.

3. Further, the salutary principles of the Act would be seriously undermined if employees were discouraged from lodging complaints about occupational safety and health matters with their employers. Such complaints to employers, if made in good faith, therefore would be related to the Act, and an employee would be protected against discharge or discrimination caused by a complaint to the employer.

F. Proceedings under or related to the act.

1. Discharge of, or discrimination against, any employee because the employee has exercised the employee's rights under or related to this Act is also prohibited by Section 34A-6-203. Examples of proceedings which would arise specifically under the Act would be inspections of work-sites under Section 34A-6-301 of the Act, employee contest of abatement date under Section 34A-6-303 of the Act, employee initiation of proceedings for promulgation of an occupational safety and health standard under Section 34A-6-202 of the Act and Title 63, Chapter 46a, employee application for modification of revocation of a variance under Section 34A-6-202(4)(c) of the Act and R614-1-9., employee judicial challenge to a standard under Section 34A-6-202(6) of the Act, and employee appeal of an order issued by an Administrative Law Judge, Commissioner, or Appeals Board under Section 34A-6-304. In determining whether a "proceeding" is "related to" the Act, the considerations discussed in R614-1-10.G. would also be applicable.

2. An employee need not himself directly institute the proceedings. It is sufficient if he sets into motion activities of others which result in proceedings under or related to the Act.

G. Testimony.

Discharge of, or discrimination against, any employee because the employee "has testified or is about to testify" in proceedings under or related to the Act is also prohibited by Section 34A-6-203. This protection would of course not be limited to testimony in proceedings instituted or caused to be instituted by the employee, but would extend to any statements given in the course of judicial, quasi-judicial, and administrative proceedings, including inspections, investigations, and administrative rulemaking or adjudicative functions. If the employee is giving or is about to give testimony in any proceeding under or related to the Act, he would be protected against discrimination resulting from such testimony.

H. Exercise of any right afforded by the Act.

1. In addition to protecting employees who file complaints, institute proceedings under or related to the Act it also prohibited by Section 34A-6-203 discrimination occurring because of the exercise "of any right afforded by this Act." Certain rights are explicitly provided in the Act; for example, there is a right to participate as a party in enforcement proceedings (34A-6-303). Certain other rights exist by necessary implications. For example, employees may request information from the Utah Occupational Safety and Health Administration; such requests would constitute the exercise of a right afforded by the Act. Likewise, employees interviewed by agents of the Administrator in the course of inspections or investigations could not subsequently be discriminated against because of their cooperation.

2. Review of the Act and examination of the legislative history discloses that, as a general matter, there is no right afforded by the Act which would entitle employees to walk off the job because of potential unsafe conditions at the workplace. Hazardous conditions which may be violative of the Act will ordinarily be corrected by the employer, once brought to his attention. If corrections are not accomplished, or if there is dispute about the existence of a hazard, the employee will normally have opportunity to request inspection of the workplace pursuant to Section 34A-6-301 of the Act, or to seek the assistance of other public agencies which have responsibility in the field of safety and health. Under such circumstances, therefore, an employer would not ordinarily be in violation of Section 34A-6-203 by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety or health hazards.

a. Occasions might arise when an employee is confronted with a choice between not performing assigned tasks or subjecting himself to serious injury or death arising from a hazardous condition at the workplace. If the employee, with no reasonable alternative, refuses in good faith to expose himself to the dangerous condition, he would be protected against subsequent discrimination. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from his employer, and been unable to obtain, a correction of the dangerous condition.

I. Procedures - Filing of complaint for discrimination.

1. Who may file. A complaint of Section 34A-6-203 discrimination may be filed by the employee himself, or by a representative authorized to do so on his behalf.

2. Nature of filing. No particular form of complaint is required.

3. Place of filing. Complaint should be filed with the Administrator, Division of Occupational Safety and Health, Labor Commission, 160 East 300 South, Salt Lake City, Utah 84114-6650, Telephone 530-6901.

4. Time for filing.

a. Section 34A-6-203(2)(b) provides protection for an employee who believes that he has been discriminated against.

b. A major purpose of the 30-day period in this provision is to allow the Administrator to decline to entertain complaints which have become stale. Accordingly, complaints not filed within 30 days of an alleged violation will ordinarily be presumed to be untimely.

c. However, there may be circumstances which would justify tolling of the 30-day period on recognized equitable principles or because of strongly extenuating circumstances, e.g., where the employer has concealed, or misled the employee regarding the grounds for discharge or other adverse action; where the employee has, within the 30-day period, resorted in good faith to grievance-arbitration proceedings under a collective bargaining agreement or filed a complaint regarding the same general subject with another agency; where the discrimination is in the nature of a continuing violation. In the absence of circumstances justifying a tolling of the 30-day period, untimely complaints will not be processed.

J. Notification of administrator's determination.

The Administrator is to notify a complainant within 90 days of the complaint of his determination whether prohibited discrimination has occurred. This 90-day provision is considered directory in nature. While every effort will be made to notify complainants of the Administrator's determination within 90 days, there may be instances when it is not possible to meet the directory period set forth in this section.

K. Withdrawal of complaint.

Enforcement of the provisions of Section 34A-6-203 is not only a matter of protecting rights of individual employees, but also of public interest. Attempts by an employee to withdraw a previously filed complaint will not necessarily result in termination of the Administrator's investigation. The Administrator's jurisdiction cannot be foreclosed as a matter of law by unilateral action of the employee. However, a voluntary and uncoerced request from a complainant to withdraw his complaint will be given careful consideration and substantial weight as a matter of policy and sound enforcement procedure.

L. Arbitration or other agency proceedings.

1. An employee who files a complaint under Section 34A-6-203(2) of the Act may also pursue remedies under grievance arbitration proceedings in collective bargaining agreements. In addition, the complainant may concurrently resort to other agencies for relief, such as the National Labor Relations Board. The Administrator's jurisdiction to entertain Section 34A-6-203 complaints, to investigate, and to determine whether discrimination has occurred, is independent of the jurisdiction of other agencies or bodies. The Administrator may file action in district court regardless of the pendency of other proceedings.

2. However, the Administrator also recognizes the policy favoring voluntary resolution of disputes under procedures in collective bargaining agreements. (See, e.g., Boy's Market, Inc. v. Retail Clerks, 398 U.S. 235 (1970); Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965); Carey v. Westinghouse Electric Co., 375 U.S. 261 (1964); Collier Insulated Wire, 192 NLRB No. 150 (1971).) By the same token, due deference should be paid to the jurisdiction of other forums established to resolve disputes which may also be related to Section 34A-6-203 complaints.

3. Where a complainant is in fact pursuing remedies other than those provided by Section 34A-6-203, postponement of the Administrator's determination and deferral to the results of such proceedings may be in order. (See, Burlington Truck Lines, Inc., v. U.S., 371 U.S. 156 (1962).)

4. Postponement of determination. Postponement of determination would be justified where the rights asserted in other proceedings are substantially the same as rights under Section 34A-6-203 and those proceedings are not likely to violate the rights guaranteed by Section 34A-6-203. The factual issues in such proceedings must be substantially the same as those raised by Section 34A-6-203 complaint, and the forum hearing the matter must have the power to determine the ultimate issue of discrimination. (See, Rios v. Reynolds Metals Co., F. 2d (5th Cir., 1972), 41 U.S.L.W. 1049 (October 10, 1972): Newman v. Avco Corp., 451 F. 2d 743 (6th Cir., 1971).)

5. Deferral to outcome of other proceedings. A determination to defer to the outcome of other proceedings initiated by a complainant must necessarily be made on a case-to-case basis, after careful scrutiny of all available information. Before deferring to the results of other proceedings, it must be clear that those proceedings dealt adequately with all factual issues, that the proceedings were fair, regular, and free of procedural infirmities, and that the outcome of the proceedings was not repugnant to the purpose and policy of the Act. In this regard, if such other actions initiated by a complainant are dismissed without adjudicative hearing thereof, such dismissal will not ordinarily be regarded as determinative of the Section 34A-6-203 complaint.

M. Employee refusal to comply with safety rules.

Employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the employer in furtherance of the Act are not exercising any rights afforded by the Act. Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations, will not ordinarily be regarded as discriminatory action prohibited by Section 34A-6-203. This situation should be distinguished from refusals to work, as discussed in R614-1-10.H.

R614-1-11. Rules of Agency Practice and Procedure Concerning UOSH Access to Employee Medical Records.

A. Policy.

UOSH access to employee medical records will in certain circumstances be important to the agency's performance of its statutory functions. Medical records, however, contain personal details concerning the lives of employees. Due to the substantial personal privacy interests involved, UOSH authority to gain access to personally identifiable employee medical information will be exercised only after the agency has made a careful determination of its need for this information, and only with appropriate safeguards to protect individual privacy. Once this information is obtained, UOSH examination and use of it will be limited to only that information needed to accomplish the purpose for access. Personally identifiable employee medical information will be retained by UOSH only for so long as needed to accomplish the purpose for access, will be kept secure while being used, and will not be disclosed to other agencies or members of the public except in narrowly defined

circumstances. This section establishes procedures to implement these policies.

B. Scope.

1. Except as provided in paragraphs R614-1-11.B.3. through 6. below, this rule applies to all requests by UOSH personnel to obtain access to records in order to examine or copy personally identifiable employee medical information, whether or not pursuant to the access provision of R614-1-12.D.

2. For the purposes of this rule, "personally identifiably employee medical information" means employee medical information accompanied by either direct identifiers (name, address, social security number, payroll number, etc.) or by information which could reasonably be used in the particular circumstances indirectly to identify specific employees (e.g., exact age, height, weight, race, sex, date of initial employment, job title, etc.).

3. This rule does not apply to UOSH access to, or the use of, aggregate employee medical information or medical records on individual employees which is not a personally identifiable form. This section does not apply to records required by R614-1-8 to death certificates, or to employee exposure records, including biological monitoring records defined by R614-1-3.M. or by specific occupational safety and health standards as exposure records.

4. This rule does not apply where UOSH compliance personnel conduct an examination of employee medical records solely to verify employer compliance with the medical surveillance record keeping requirements of an occupational safety and health standard, or with R614-1-12. An examination of this nature shall be conducted on-site and, if requested, shall be conducted under the observation of the record holder. The UOSH compliance personnel shall not record and take off-site any information from medical records other than documentation of the fact of compliance or non-compliance.

5. This rule does not apply to agency access to, or the use of, personally identifiable employee medical information obtained in the course of litigation.

6. This rule does not apply where a written directive by the Administrator authorizes appropriately qualified personnel to conduct limited reviews of specific medical information mandated by an occupational safety and health standard, or of specific biological monitoring test results.

7. Even if not covered by the terms of this rule, all medically related information reported in a personally identifiable form shall be handled with appropriate discretion and care befitting all information concerning specific employees. There may, for example, be personal privacy interests involved which militate against disclosure of this kind of information to the public.

C. Responsible persons.

1. UOSH Administrator. The Administrator of the Division of Occupational Safety and Health of the Labor Commission shall be responsible for the overall administration and implementation of the procedures contained in this rule, including making final UOSH determinations concerning:

a. Access to personally identifiable employee medical information, and

b. Inter-agency transfer or public disclosure of personally identifiable employee medical information.

2. UOSH Medical Records Officer. The Administrator shall designate a UOSH official with experience or training in the evaluation, use, and privacy protection of medical records to be the UOSH Medical Records Officer. The UOSH Medical Records Officer shall report directly to the Administrator on matters concerning this section and shall be responsible for:

a. Making recommendations to the Administrator as to the approval or denial of written access orders.

b. Assuring that written access orders meet the requirements of paragraphs R614-1-11.D.2. and 3. of this rule.

c. Responding to employee, collective bargaining agent, and employer objections concerning written access orders.

d. Regulating the use of direct personal identifiers.

e. Regulating internal agency use and security of personally identifiable employee medical information.

f. Assuring that the results of agency analyses of personally identifiable medical information are, where appropriate, communicated to employees.

g. Preparing an annual report of UOSH's experience under this rule.

h. Assuring that advance notice is given of intended inter-agency transfers or public disclosures.

3. Principal UOSH Investigator. The Principal UOSH Investigator shall be the UOSH employee in each instance of access to personally identifiable employee medical information who is made primarily responsible for assuring that the examination and use of this information is performed in the manner prescribed by a written access order and the requirements of this section. When access is pursuant to a written access order, the Principal UOSH Investigator shall be professionally trained in medicine, public health, or allied fields (epidemiology, toxicology, industrial hygiene, bio-statistics, environmental health, etc.)

D. Written access orders.

1. Requirement for written access order. Except as provided in paragraph R614-1-11.D.4. below, each request by a UOSH representative to examine or copy personally identifiable employee medical information contained in a record held by an employer or other record holder shall be made pursuant to a written access order which has been approved by the Administrator upon the recommendation of the UOSH Medical Records Officer. If deemed appropriate, a written access order may constitute, or be accompanied by an administrative subpoena.

2. Approval criteria for written access order. Before approving a written access order, the Administrator and the UOSH Medical Records Officer shall determine that:

a. The medical information to be examined or copied is relevant to a statutory purpose and there is a need to gain access to this personally identifiable information.

b. The personally identifiable medical information to be examined or copied is limited to only that information needed to accomplish the purpose for access, and

c. The personnel authorized to review and analyze the personally identifiable medical information are limited to those who have a need for access and have appropriate professional qualifications.

3. Content of written access order. Each written access order shall state with reasonable particularity:

a. The statutory purposes for which access is sought.

b. The general description of the kind of employee medical information that will be examined and why there is a need to examine personally identifiable information.

c. Whether medical information will be examined on-site, and what type of information will be copied and removed off-site.

d. The name, address, and phone number of the Principal UOSH Investigator and the names of any other authorized persons who are expected to review and analyze the medical information.

e. The name, address, and phone number of the UOSH Medical Records Officer, and

f. The anticipated period of time during which UOSH expects to retain the employee medical information in a personally identifiable form.

4. Special situations. Written access orders need not be obtained to examine or copy personally identifiable employee medical information under the following circumstances:

a. Specific written consent. If the specific written consent of an employee is obtained pursuant to R614-1-12.D., and the agency or an agency employee is listed on the authorization as the designated representative to receive the medical information, then a written access order need not be obtained. Whenever personally identifiable employee medical information is obtained through specific written consent and taken off-site, a Principal UOSH Investigator shall be promptly named to assure protection of the information, and the UOSH Medical Records Officer shall be notified of this person's identity. The personally identifiable medical information obtained shall thereafter be subject to the use and security requirements of paragraphs R614-1-11.H.

b. Physician consultations. A written access order need not be obtained where a UOSH staff or contract physician consults with an employer's physician concerning an occupational safety or health issue. In a situation of this nature, the UOSH physician may conduct on-site evaluation of employee medical records in consultation with the employer's physician, and may make necessary personal notes of his or her findings. No employee medical records however, shall be taken off-site in the absence of a written access order or the specific written consent of an employee, and no notes of personally identifiable employee medical information made by the UOSH physician shall leave his or her control without the permission of the UOSH Medical Records Officer.

E. Presentation of written access order and notice to employees.

1. The Principal UOSH Investigator, or someone under his or her supervision, shall present at least two (2) copies each of the written access order and an accompanying cover letter to the employer prior to examining or obtaining medical information subject to a written access order. At least one copy of the written access order shall not identify specific employees by direct personal identifier. The accompanying cover letter shall summarize the requirements of this section and indicate that questions or objections concerning the written access order may be directed to the Principal UOSH Investigator or to the UOSH Medical Records Officer.

2. The Principal UOSH Investigator shall promptly present a copy of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to each collective bargaining agent representing employees whose medical records are subject to the written access order.

3. The Principal UOSH Investigator shall indicate that the employer must promptly post a copy of the written access order which does not identify specific employees by direct personal identifier, as well as post its accompanying cover letter.

4. The Principal UOSH Investigator shall discuss with any collective bargaining agent and with the employer the appropriateness of individual notice to employees affected by the written access order. Where it is agreed that individual notice is appropriate, the Principal UOSH Investigator shall promptly provide to the employer an adequate number of copies of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to enable the employer either to individually notify each employee or to place a copy in each employee's medical file.

F. Objections concerning a written access order. All employees, collective bargaining agents, and employer written objections concerning access to records pursuant to a written access order shall be transmitted to the UOSH Medical Records Officer. Unless the agency decides otherwise, access to the record shall proceed without delay notwithstanding the lodging of an objection. The UOSH Medical Records Officer shall respond in writing to each employee's and collective bargaining agent's written objection to UOSH access. Where appropriate, the UOSH Medical Records Officer may revoke a written access order and direct that any medical information obtained by it by returned to the original record holder or destroyed. The principal UOSH Investigator shall assure that such instructions by the UOSH Medical Records Officer are promptly implemented.

G. Removal of direct personal identifiers. Whenever employees medical information obtained pursuant to a written access order is taken off-site with direct personal identifiers included, the Principal UOSH Investigator shall, unless otherwise authorized by the UOSH Medical Records Officer, promptly separate all direct personal identifiers from the medical information, and code the medical information and the list of direct identifiers with a unique identifying number of each employee. The medical information with its numerical code shall thereafter be used and kept secured as though still in a directly identifiable form. The Principal UOSH Investigator shall also hand deliver or mail the list of direct personal identifiers with their corresponding numerical codes to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall thereafter limit the use and distribution of the list of coded identifiers to those with a need to know its contents.

H. Internal agency use of personally identifiable employee medical information.

1. The Principal UOSH Investigator shall in each instance of access be primarily responsible for assuring that personally identifiable employee medical information is used and kept secured in accordance with this section.

2. The Principal UOSH Investigator, the UOSH Medical Records Officer, the Administrator, and any other authorized

person listed on a written access order may permit the examination or use of personally identifiable employee medical information by agency employees and contractors who have a need for access, and appropriate qualifications for the purpose for which they are using the information. No UOSH employee or contractor is authorized to examine or otherwise use personally identifiable employee medical information unless so permitted.

3. Where a need exists, access to personally identifiable employee medical information may be provided to attorneys in the office of the State Attorney General, and to agency contractors who are physicians or who have contractually agreed to abide by the requirements of this section and implementing agency directives and instructions.

4. UOSH employees and contractors are only authorized to use personally identifiable employee medical information for the purposes for which it was obtained, unless the specific written consent of the employee is obtained as to a secondary purpose, or the procedures of R614-1-11.D. through G. are repeated with respect to the secondary purpose.

5. Whenever practicable, the examination of personally identifiable employee medical information shall be performed on-site with a minimum of medical information taken off-site in a personally identifiable form.

I. Security procedures.

1. Agency files containing personally identifiable employee medical information shall be segregated from other agency files. When not in active use, files containing this information shall be kept secured in a locked cabinet or vault.

2. The UOSH Medical Records Officer and the Principal UOSH Investigator shall each maintain a log of uses and transfers of personally identifiable employee medical information and lists of coded direct personal identifiers, except as to necessary uses by staff under their direct personal supervision.

3. The photocopying or other duplication of personally identifiable employee medical information shall be kept to the minimum necessary to accomplish the purposes for which the information was obtained.

4. The protective measures established by this rule apply to all worksheets, duplicate copies, or other agency documents containing personally identifiable employee medical information.

5. Intra-agency transfers of personally identifiable employee medical information shall be by hand delivery, United States mail, or equally protective means. Inter-office mailing channels shall not be used.

J. Retention and destruction of records.

1. Consistent with UOSH records disposition programs, personally identifiable employee medical information and lists of coded direct personal identifiers shall be destroyed or returned to the original record holder when no longer needed for the purposes for which they were obtained.

2. Personally identifiable employee medical information which is currently not being used actively but may be needed for future use shall be transferred to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall conduct an annual review of all centrally-held information to determine which information is no longer needed for the purposes for which it was obtained.

K. Results of an agency analysis using personally identifiable employee medical information.

1. The UOSH Medical Records Officer shall, as appropriate, assure that the results of an agency analysis using personally identifiable employee medical information are communicated to the employees whose personal medical information was used as a part of the analysis.

2. Annual report. The UOSH Medical Records Officer shall on an annual basis review UOSH's experience under this section during the previous year, and prepare a report to the UOSH Administrator which shall be made available to the public. This report shall discuss:

a. The number of written access orders approved and a summary of the purposes for access;

b. The nature and disposition of employee; collective bargaining agent, and employer written objections concerning UOSH access to personally identifiable employee medical information; and

c. The nature and disposition of requests for inter-agency transfer or public disclosure of personally identifiable employee medical information.

L. Inter-agency transfer and public disclosure.

1. Personally identifiable employee medical information shall not be transferred to another agency or office outside of UOSH (other than to The Attorney General's Office) or disclosed to the public (other than to the affected employee or the original record holder) except when required by law or when approved by the Administrator.

2. Except as provided in paragraph R614-1-11.L.3. below, the Administrator shall not approve a request for an inter-agency transfer of personally identifiable employee medical information, which has not been consented to by the affected employees, unless the request is by a public health agency which:

a. Needs the requested information in a personally identifiable form for a substantial public health purpose;

b. Will not use the requested information to make individual determinations concerning affected employees which could be to their detriment;

c. Has regulations or established written procedures providing protection for personally identifiable medical information substantially equivalent to that of this section; and

d. Satisfies an exemption to the Privacy Act to the extent that the Privacy Act applies to the requested information (See 5 U.S.C. 552a(b); 29 CFR 70a.3).

3. Upon the approval of the Administrator, personally identifiable employee medical information may be transferred to:

a. The National Institute for Occupational Safety and Health (NIOSH).

b. The Department of Justice when necessary with respect to a specific action under the federal Occupational Safety and Health Act of 1970 and Utah Occupational Safety and Health Act of 1973.

4. The Administrator shall not approve a request for public disclosure of employee medical information containing direct personal identifiers unless there are compelling circumstances affecting the health or safety of an individual.

5. The Administrator shall not approve a request for public disclosure of employee medical information which contains information which could reasonably be used indirectly to identify specific employees when the disclosure would constitute a clearly unwarranted invasion of personal privacy.

6. Except as to inter-agency transfers to NIOSH or the State Attorney General's Office, the UOSH Medical Records Officer shall assure that advance notice is provided to any collective bargaining agent representing affected employees and to the employer on each occasion that UOSH intends to either transfer personally identifiable employee medical information to another agency or disclose it to a member of the public other than to an affected employee. When feasible, the UOSH Medical Records Officer shall take reasonable steps to assure that advance notice is provided to affected employees when the employee medical information to be released or disclosed contains direct personal identifiers.

M. Effective date.

This rule shall become effective on January 15, 1981.

R614-1-12. Access to Employee Exposure and Medical Records.

A. Purpose.

To provide employees and their designated representatives a right of access to relevant exposure and medical records, and to provide representatives of the Administrator a right of access to these records in order to fulfill responsibilities under the Utah Occupational Safety and Health Act. Access by employees, their representatives, and the Administrator is necessary to yield both direct and indirect improvements in the detection, treatment, and prevention of occupational disease. Each employer is responsible for assuring compliance with this Rule, but the activities involved in complying with the access to medical records provisions can be carried out, on behalf of the employer, by the physician or other health care personnel in charge of employee medical records. Except as expressly provided, nothing in this Rule is intended to affect existing legal and ethical obligations concerning the maintenance and confidentiality of employee medical information, the duty to disclose information to a patient/employee or any other aspect of the medical-care relationship, or affect existing legal obligations concerning the protection of trade secret information.

B. Scope.

1. This rule applies to each general industry, maritime, and construction employer who makes, maintains, contracts for, or has access to employee exposure or medical records, or analyses thereof, pertaining to employees exposed to toxic substances or harmful physical agents.

2. This rule applies to all employee exposure and medical records, and analyses thereof, of employees exposed to toxic substances or harmful physical agents, whether or not the records are related to specific occupational safety and health standards.

3. This rule applies to all employee exposure and medical records, and analyses thereof, made or maintained in any manner, including on an in-house or contractual (e.g., fee-for-service) basis. Each employer shall assure that the preservation and access requirements of this rule are complied with regardless of the manner in which records are made or maintained.

C. Preservation of records.

1. Unless a specific occupational safety and health standard provides a different period of time, each employer shall assure the preservation and retention of records as follows:

a. Employee medical records. Each employee medical record shall be preserved and maintained for a least the duration of employment plus thirty (30) years, except that health insurance claims records maintained separately from the employer's medical program and its records need not be retained for any specified period.

b. Employee exposure records. Each employee exposure record shall be preserved and maintained for at least thirty (30) years, except that:

(1) Background data to environmental (workplace) monitoring or measuring, such a laboratory reports and worksheets, need only be retained for one (1) year so long as the sampling results, the collection methodology (sampling plan), a description of the analytical and mathematical methods used, and a summary of other background data relevant to interpretation of the results obtained, are retained for at least thirty (30) years; and

(2) Material safety data sheets and paragraph R614-1-3.M.4. records concerning the identity of a substance or agent need not be retained for any specified period as long as some record of the identity (chemical name if known) of the substance or agent, where it was used, and when it was used is retained for at least thirty (30) years; and

c. Analyses using exposure or medical records. Each analysis using exposure or medical records shall be preserved and maintained for at least thirty (30) years.

2. Nothing in this rule is intended to mandate the form, manner, or process by which an employer preserves a record so long as the information contained in the record is preserved and retrievable, except that X-ray films shall be preserved in their original state.

D. Access to records.

1. Whenever an employee or designated representative requests access to a record, the employer shall assure that access is provided in a reasonable time, place, and manner, but in no event later than fifteen (15) days after the request for access is made.

2. Whenever an employee or designated representative requests a copy of a record, the employer shall, within the period of time previously specified, assure that either:

a. A copy of the record is provided without cost to the employee or representative;

b. The necessary mechanical copying facilities (e.g., photocopying) are made available without cost to the employee or representative for copying the record; or

c. The record is loaned to the employee or representative for a reasonable time to enable a copy to be made.

3. Whenever a record has been previously provided without cost to an employee or designated representative, the employer may charge reasonable, non-discriminatory administrative costs (i.e., search and copy expenses but not including overhead expenses) for a request by the employee or designated representative for additional copies of the record,

except that:

a. An employer shall not charge for an initial request for a copy of new information that has been added to a record which was previously provided; and

b. An employer shall not charge for an initial request by a recognized or certified collective bargaining agent for a copy of an employee exposure record or an analysis using exposure or medical records.

4. Nothing in this rule is intended to preclude employees and collective bargaining agents from collectively bargaining to obtain access to information in addition to that available under this rule.

5. Employee and designated representative access.

a. Employee exposure records. Each employer shall, upon request, assure the access of each employee and designated representative to employee exposure records relevant to the employee. For the purpose of this rule exposure records relevant to the employee consist of:

(1) Records of the employee's past or present exposure to toxic substances or harmful physical agents,

(2) Exposure records of other employees with past or present job duties or working conditions related to or similar to those of the employee,

(3) Records containing exposure information concerning the employee's workplace or working conditions, and

(4) Exposure records pertaining to workplaces or working conditions to which the employee is being assigned or transferred.

b. Employee medical records.

(1) Each employer shall, upon request, assure the access of each employee to employee medical records of which the employee is the subject, except as provided in R614-1-12.D.4.

(2) Each employer shall, upon request, assure the access of each designated representative to the employee medical records of any employee who has given the designated representative specific written consent. R614-1-12A., Appendix A to R614-1-12., contains a sample form which may be used to establish specific written consent for access to employee medical records.

(3) Whenever access to employee medical records is requested, a physician representing the employer may recommend that the employee or designated representative:

(a) Consult with the physician for the purposes of reviewing and discussing the records requested;

(b) Accept a summary of material facts and opinions in lieu of the records requested;, or

(c) Accept release of the requested records only to a physician or other designated representative.

(4) Whenever an employee requests access to his or her employee medical records, and a physician representing the employer believes that direct employee access to information contained in the records regarding a specific diagnosis of a terminal illness or a psychiatric condition could be detrimental to the employees health, the employer may inform the employee that access will only be provided to a designated representative of the employee having specific written consent, and deny the employee's request for direct access to this information only. Where a designated representative with specific written consent requests access to information so withheld, the employer shall assure the access of the designated representative to this information, even when it is known that the designated representative will give the information to the employee.

(5) Nothing in this rule precludes physician, nurse, or other responsible health care personnel maintaining employee medical records from deleting from requested medical records the identity of a family member, personal friend, or fellow employee who has provided confidential information concerning an employee's health status.

c. Analysis using exposure or medical records.

(1) Each employer shall, upon request, assure the access of each employee and designated representative to each analysis using exposure or medical records concerning the employee's working conditions or workplace.

(2) Whenever access is requested to an analysis which reports the contents of employee medical records by either direct identifier (name, address, social security number, payroll number, etc.) or by information which could reasonably be used under the circumstances indirectly to identify specific employees (exact age, height, weight, race, sex, date of initial employment, job title, etc.) the employer shall assure that personal identifiers are removed before access is provided. If the employer can demonstrate that removal of personal identifiers from an analysis is not feasible, access to the personally identifiable portions of analysis need not be provided.

(3) UOSH access.

(a) Each employer shall, upon request, assure the immediate access of representatives of the Administrator to employee exposure and medical records and to analysis using exposure or medical records. Rules of agency practice and procedure governing UOSH access to employee medical records are contained in R614-1-8.

(b) Whenever UOSH seeks access to personally identifiable employee medical information by presenting to the employer a written access order pursuant to R614-1-8, the employer shall prominently post a copy of the written access order and its accompanying cover letter for at least fifteen (15) working days.

E. Trade Secrets.

1. Except as provided in paragraph R614-1-12.E.2., nothing in this rule precludes an employer from deleting from records requested by an employee or designated representative any trade secret data which discloses manufacturing processes, or discloses the percentage of a chemical substance in a mixture, as long as the employee or designated representative is notified that information has been deleted. Whenever deletion of trade secret information substantially impairs evaluation of the place where or the time when exposure to a toxic substance or harmful physical agent occurred, the employer shall provide alternative information which is sufficient to permit the employee to identify where and when exposure occurred.

2. Notwithstanding any trade secret claims, whenever access to records is requested, the employer shall provide access to chemical or physical agent identities including chemical names, levels of exposure, and employee health status data contained in the requested records.

3. Whenever trade secret information is provided to an employee or designated representative, the employer may require, as a condition of access, that the employee or

designated representative agree in writing not to use the trade secret information for the purpose of commercial gain and not to permit misuse of the trade secret information by a competitor or potential competitor of the employer.

F. Employee information.

1. Upon an employee's first entering into employment, and at least annually thereafter, each employer shall inform employees exposed to toxic substances or harmful physical agents of the following;

a. The existence, location, and availability of any records covered by this rule;

b. The person responsible for maintaining and providing access to records; and

c. Each employee's right of access to these records.

2. Each employer shall make readily available to employees a copy of this rule and its appendices, and shall distribute to employees any informational materials concerning this rule which are made available to the employer by the Administrator.

G. Transfer of Records

1. Whenever an employer is ceasing to do business, the employer shall transfer all records subject to this Rule to the successor employer. The successor employer shall receive and maintain these records.

2. Whenever an employer is ceasing to do business and there is no successor employer to receive and maintain the records subject to this standard, the employer shall notify affected employees of their rights of access to records at least three (3) months prior to the cessation of the employer's business.

3. Whenever an employer either is ceasing to do business and there is no successor employer to receive and maintain the records, or intends to dispose of any records required to be preserved for at least thirty (30) years, the employer shall:

a. Transfer the records to the Director of the National Institute for Occupational Safety and Health (NIOSH) if so required by a specific occupational safety and health standard; or

b. Notify the Director of NIOSH in writing of the impending disposal of records at least three (3) months prior to the disposal of the records.

4. Where an employer regularly disposes of records required to be preserved for at least thirty (30) years, the employer may, with at least (3) months notice, notify the Director of NIOSH on an annual basis of the records intended to be disposed of in the coming year.

a. Appendices. The information contained in the appendices to this rule is not intended, by itself, to create any additional obligations not otherwise imposed by this rule nor detract from any existing obligation.

H. Effective date. This rule shall become effective on December 5, 1980. All obligations of this rule commence on the effective date except that the employer shall provide the information required under R614-1-12.F.1. to all current employees within sixty (60) days after the effective date.

R614-1-12A. Appendix A to R614-1-12 SAMPLE.

Authorization letter for the Release of Employee Medical Record Information to Designated Representative.

I, (full name of worker/patient), hereby authorize (individual or organization holding the medical records), to release to (individual or organization authorized to receive the medical information), the following medical information from my personal medical records: (Describe generally the information desired to be released).

I give my permission for this medical information to be used for the following purpose: ....., but I do not give permission for any other use or re-disclosure of this information.

(Note---Several extra lines are provided below so that you can place additional restrictions on this authorization letter if you want to. You may, however, leave these lines blank. On the other hand, you may want to (1) specify a particular expiration date for this letter (if less than one year): (2) describe medical information to be created in the future that you intend to be covered by this authorization letter, or (3) describe portions of the medical information in you records which you do not intend to be released as a result of this letter.)

Full name of Employee or Legal Representative

Signature of Employee or Legal Representative

Date of Signature

R614-1-12B. Appendix B to R614-1-12 Availability of NIOSH Registry of Toxic Effects of Chemical Substances (RTECS).

R614-1-12 applies to all employee exposure and medical records, and analysis thereof, of employees exposed to toxic substances or harmful physical agents (see R614-1-12.B.2.). The term "toxic substance" or "harmful physical agent" is defined by paragraph R614-1-3.FF. to encompass chemical substances, biological agents, and physical stresses for which there is evidence of harmful health effects. The standard uses the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) as one of the chief sources of information as to whether evidence of harmful health effects exists. If a substance is listed in the latest printed RTECS, the standard applies to exposure and medical records (and analysis of these records) relevant to employees exposed to the substances.

It is appropriate to note that the final standard does not require that employers purchase a copy of RTECS and many employers need not consult RTECS to ascertain whether their employee exposure or medical records are subject to the standard. Employers who do not currently have the latest printed edition of the NIOSH RTECS, however, may desire to obtain a copy. The RTECS is issued in an annual printed edition as mandated by Rule 20(a)(6) of the Occupational Safety and Health Act (29 U.S.C. 669 (a)(6)). The 1978 edition is the most recent printed edition as of May 1, 1980. Its Forward and Introduction describes the RTECS as follows:

"The annual publication of a list of known toxic substances is a NIOSH mandate under the Occupational Safety and Health Act of 1970. It is intended to provide basic information on the known toxic and biological effects of chemical substances for the use of employers, employees, physicians, industrial hygienists, toxicologists, researchers, and, in general, anyone concerned with the proper and safe handling of chemicals. In turn, this information may contribute to a better understanding

of potential occupational hazards by everyone involved and ultimately may help to bring about a more healthful workplace environment.

"This registry contains 142,247 listings of chemical substances: 33,929 are names of different chemicals with their associated toxicity data and 90,318 are synonyms. This edition includes approximately 7,500 new chemical compounds that did not appear in the 1977 Registry.

"The Registry's purposes are many, and it serves a variety of users. It is a single source document for basic toxicity information and for other data, such as chemical identifiers and information necessary for the preparation of safety directives and hazard evaluations for chemical substances. The various types of toxic effects linked to literature citations provide researchers and occupational health scientists with an introduction to the toxicological literature, making their own review of the toxic hazards of a given substance easier. By presenting data on the lowest reported doses that produce effects by several routes of entry in various species, the Registry furnishes valuable information to those responsible for preparing safety data sheets for chemical substances in the workplace. Chemical and production engineers can use the Registry to identify the hazards which may be associated with chemical intermediates in the development of final products, and thus can more readily select substitutes or alternate processes which may be less hazardous.

"In this edition of the Registry, the editors intend to identify "all known toxic substances" which may exist in the environment and to provide pertinent data on the toxic effects from known does entering an organism by any route described. Data may be used for the evaluation of chemical hazards in the environment, whether they be in the workplace, recreation area, or living quarters.

"It must be reemphasized that the entry of a substance in the Registry does not automatically mean that it must be avoided. A listing does mean, however, that the substance has the documented potential of being harmful if misused, and care must be exercised to prevent tragic consequences."

The RTECS 1978 printed edition may be purchased for $13.00 from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, D.C. 20402 (202-783-3238) (GPO Stock No. 017-033-00346-7). The 1979 printed edition is anticipated to be issued in the summer of 1980. Some employers may also desire to subscribe to the quarterly update to the RTECS which is published in a microfiche edition. An annual subscription to the quarterly microfiche may be purchase from the GPO for $14.00 (Order the "Microfiche Edition. Registry of Toxic Effects of Chemical Substances"). Both the printed edition and the microfiche edition of RTECS are available for review at many university and public libraries throughout the country. The latest RTECS editions may also be examined at OSHA Technical Data Center, Room N2439-Rear, United States Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 (202-523-9700), or any OSHA Regional or Area Office (See major city telephone directories under United States Government-Labor Department).

KEY: safety

R616. Labor Commission, Safety.
R616-2. Boiler and Pressure Vessel Rules.
R616-2-1. Authority.

This rule is established pursuant to Title 34A, Chapter 7 for the purpose of establishing reasonable safety standards for boilers and pressure vessels to prevent exposure to risks by the public and employees.

R616-2-2. Definitions.

A. "ASME" means the American Society of Mechanical Engineers.

B. "Boiler inspector" means a person who is an employee of:

1. The Division who is authorized to inspect boilers and pressure vessels by having met nationally recognized standards of competency and having received the Commission's certificate of competency; or

2. An insurance company writing boiler and pressure vessel insurance in Utah who is deputized to inspect boilers and pressure vessels by having met nationally recognized standards of competency, receiving the Commission's certificate of competency, and having paid a certification fee.

C. "Commission" means the Labor Commission created in Section 34A-1-103.

D. "Division" means the Division of Safety of the Labor Commission.

E. "National Board" means the National Board of Boiler and Pressure Vessel Inspectors.

F. "Nonstandard" means a boiler or pressure vessel that does not bear ASME and National Board stamping and registration.

G. "Owner/user agency" means any business organization operating pressure vessels in this state that has a valid owner/user certificate from the Commission authorizing self-inspection of unfired pressure vessels by its owner/user agents, as regulated by the Commission, and for which a fee has been paid.

H. "Owner/user agent" means an employee of an owner/user agency who is authorized to inspect unfired pressure vessels by having met nationally recognized standards of competency, receiving the Commission's certificate of competency, and having paid a certification fee.

R616-2-3. Safety Codes and Rules for Boilers and Pressure Vessels.

The following safety codes and rules shall apply to all boilers and pressure vessels in Utah, except those exempted pursuant to Section 34A-7-101, and are incorporated herein by this reference in this rule.

A. ASME Boiler and Pressure Vessel Code (2001).

1. Section I Rules for Construction of Power Boilers published July 1, 2001.

2. Section IV Rules for Construction of Heating Boilers published July 1, 2001.

3. Section VIII Rules for Construction of Pressure Vessels published July 1, 2001.

B. Power Piping ASME B31.1 (1998) and the ASME B31.1b-2000 Addenda, issued September 15, 2000.

C. Controls and Safety Devices for Automatically Fired Boilers ASME CSD-1-1998 and the ASME CSD-1a-1999 addenda, issued March 10, 2000.

D. National Board Inspection Code ANSI/NB-23 (1998); the 1999 NBIC Addendum, published December 31, 1999, and the 2000 Addendum, published January 8, 2001.

E. Standard for the Prevention of Furnace Explosions/Implosions in Single Burner Boilers, NFPA 8501 (1997).

F. Standard for the Prevention of Furnace Explosions/Implosions in Multiple Burner Boilers, NFPA 8502 (1995).

G. Recommended Administrative Boiler and Pressure Vessel Safety Rules and Regulations NB-132 Rev. 4.

H. Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair and Alteration API 510 (1997); the 1998 Addenda, published December 1998, and Addendum 2, published December 2000.

R616-2-4. Quality Assurance for Boilers, Pressure Vessels and Power Piping.

A. Consistent with the requirements of the Commission and its predecessor agency since May 1, 1978, all boilers and pressure vessels installed on or after May 1, 1978 shall be registered with the National Board and the data plate must include the National Board number.

B. Pursuant to Section 34A-7-102(2), any boiler or pressure vessel of special design must be approved by the Division to ensure it provides a level of safety equivalent to that contemplated by the Boiler and Pressure Vessel Code of the ASME. Any such boiler or pressure vessel must thereafter be identified by a Utah identification number provided by the Division.

C. All steam piping, installed after May 1, 1978, which is external (from the boiler to the first stop valve for a single boiler and the second stop valve in a battery of two or more boilers having manhole openings) shall comply with Section 1 of the ASME Boiler and Pressure Vessel Code or ASME B31.1 Power Piping as applicable.

D. Nonstandard boilers or pressure vessels installed in Utah before July 1, 1999 may be allowed to continue in operation provided the owner can prove the equivalence of its design to the requirements of the ASME Boiler and Pressure Vessel Code. Nonstandard boilers or pressure vessels may not be relocated or moved.

E. Effective July 1, 1999, all boiler and pressure vessel repairs or alterations must be performed by an organization holding a valid Certificate of Authorization to use the "R" stamp from the National Board. Repairs to pressure relief valves shall be performed by an organization holding a valid Certificate of Authorization to use the "VR" stamp from the National Board.

R616-2-5. Code Applicability.

A. The safety codes which are applicable to a given boiler or pressure vessel installation are the latest versions of the codes in effect at the time the installation commenced.

B. If a boiler or pressure vessel is replaced, this is considered a new installation.

C. If a boiler or pressure vessel is relocated to another location or moved in its existing location, this is considered a

new installation.

R616-2-6. Variances to Code Requirements.

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 or user, the Division may allow the owner or user a variance pursuant to Section 34A-7-102. Variances must be in writing to be effective, and can be revoked after reasonable notice is given in writing.

B. Persons who apply for a variance to a safety code requirement must present the Division with the rationale as to how their boiler or pressure vessel installation provides safety equivalent to the safety code.

C. No errors or omissions in these codes shall be construed as permitting any unsafe or unsanitary condition to exist.

R616-2-7. Boiler and Pressure Vessel Compliance Manual.

A. The Division shall develop and issue a safety code compliance manual for organizations and personnel involved in the design, installation, operation and maintenance of boilers and pressure vessels in Utah.

B. This compliance manual shall be reviewed annually for accuracy and shall be re-issued on a frequency not to exceed two years.

C. If a conflict exists between the Boiler and Pressure Vessel compliance manual and a safety code adopted in R616-2-3, the code requirements will take precedence.

R616-2-8. Inspection of Boilers and Pressure Vessels.

A. It shall be the responsibility of the Division to make inspections of all boilers or pressure vessels operated within its jurisdiction, when deemed necessary or appropriate.

B. Boiler inspectors shall examine conditions in regards to the safety of the employees, public, machinery, ventilation, drainage, and into all other matters connected with the safety of persons using each boiler or pressure vessel, and when necessary give directions providing for the safety of persons in or about the same. The owner or user is required to freely permit entry, inspection, examination and inquiry, and to furnish a guide when necessary. In the event an internal inspection of a boiler or pressure vessel is required the owner or user shall, at a minimum, prepare the boiler or pressure vessel by meeting the requirements of 29 CFR Part 1910.146 "Permit Required Confined Spaces" and 29 CFR Part 1910.147 "Control of Hazardous Energy (Lockout/Tagout)".

C. If the Division finds a boiler or pressure vessel complies with the safety codes and rules, the owner or user shall be issued a Certificate of Inspection and Permit to Operate.

D. If the Division finds a boiler or pressure vessel is not being operated in accordance with safety codes and rules, the owner or 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 boiler or pressure vessel into compliance.

E. Pursuant to Sections 34A-1-104, 34A-2-301 and 34A-7-102, if the improvements or changes to the boiler or pressure vessel are not made within a reasonable time, the boiler or pressure vessel is being operated unlawfully.

F. If the owner or user refuses to allow an inspection to be made, the boiler or pressure vessels is being operated unlawfully.

G. If the owner or user refuses to pay the required fee, the boiler or pressure vessel is being operated unlawfully.

H. If the owner or user operates a boiler or pressure vessel unlawfully, the Commission may order the boiler or pressure vessel operation to cease pursuant to Sections 34A-1-104 and 34A-7-103.

I. If, in the judgment of a boiler inspector, the lives or safety of employees or public are or may be endangered should they remain in the danger area, the boiler inspector shall direct that they be immediately withdrawn from the danger area, and the boiler or pressure vessel be removed from service until repairs have been made and the boiler or pressure vessel has been brought into compliance.

J. An owner/user agency may conduct self inspection of its own unfired pressure vessels with its own employees who are owner/user agents under procedures and frequencies established by the Division.

R616-2-9. Fees.

Fees to be charged as required by Section 34A-7-104 shall be adopted by the Labor Commission and approved by the Legislature pursuant to Section 63-38-3(2).

R616-2-10. Notification of Installation, Revision, or Repair.

A. Before any boiler covered by this rule is installed or before major revision or repair, particularly welding, begins on a boiler or pressure vessel, the Division must be advised at least one week in advance of such installation, revision, or repair unless emergency dictates otherwise.

B. It is recommended that a business organization review its plans for purchase and installation, or of revision or repair, of a boiler or pressure vessel well in advance with the Division to ensure meeting code requirements upon finalization.

R616-2-11. 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 boiler inspector are informal adjudicative actions commenced by the agency per Section 63-46b-3.

R616-2-12. Presiding Officer.

The boiler inspector is the presiding officer referred to in Section 63-46b-3. If an informal hearing is requested pursuant to R616-2-13, the Commission shall appoint the presiding officer for that hearing.

R616-2-13. 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(3).

R616-2-14. Classification of Proceeding for Purpose of Utah Administrative Procedures Act.

Any hearing held pursuant to R616-2-13 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 63-46b-4(3).

KEY: boilers*, certification, safety
January 15, 2002 34A-7-101 et seq.
Notice of Continuation January 10, 2002

R638. Natural Resources, Geological Survey.
R638-1. Acceptance and Maintenance of Confidential Information.
R638-1-1. Authority, Purpose, and Scope.

a. Authority: This rule is authorized under Subsection 63-73-6(2) UCA.

b. Purpose: This rule enables the Utah Geological Survey to have access to confidential information which it otherwise could not acquire, or which is beyond the financial capability of the Survey to acquire.

c. Scope: This rule provides: (1) guidelines for determining whether or not to accept confidential information, (2) the types of information that will be maintained as confidential, and (3) the process to be used for accepting and maintaining confidential information.

R638-1-2. Definitions.

a. "Information" as used in this rule refers to data, statistics, reports, samples and other facts, whether analyzed or processed or not, pertaining to the geology of Utah.

b. "Internal Records" are preliminary documents and notes compiled by employees of the Survey or its contractors in the process of geologic investigations.

c. "Confidential Information" as used in this rule refers to geologic information given to the Survey or purchased by the Survey with the stipulation that the information be held confidential.

d. "Board" is the Board of the Utah Geological Survey.

e. "Director" is the Director of the Utah Geological Survey, or State Geologist.

f. "Survey" is the Utah Geological Survey.

g. "Geology" refers to the geology and the mineral occurrences of the State.

h. "Source is the individual, agency, or organization who provides information to the Survey and stipulates that it is confidential information.

R638-1-3. General Provisions.

a. It is the policy of the Survey and the Board that unless otherwise specified herein, this rule shall be interpreted liberally in favor of public disclosure of information maintained by the Survey. Further, all of the Survey's conclusions and recommendations on geological matters will be made available to the public in accordance with this rule.

b. The Director is the custodian of Survey records.

c. The Director will report regularly to the Board concerning the following: the types of information received by the Survey as confidential; the frequency and nature of requests for access/usage of Survey information which has not yet been made public; and determinations including reasons for not accepting information. The Board will hear appeals of decisions made by the Director and may override the Director but no Board action shall in any way jeopardize the level of confidentiality assigned by the source.

d. The Director has the authority to refuse information that has been offered to the Survey if it appears to be not in the best interest of the State or the Survey. Without disclosing the confidentiality of the offered information, the Director may consult with the Governor of the State of Utah in exercising this authority.

e. Information will be maintained according to the source-designated level of Category B or C. The Director will sign all documents pertaining to confidentiality.

f. Information can be declassified only by written direction from the source or at the expiration period for confidentiality agreed upon by the source and the Survey.

g. Unless otherwise directed by the source, access to confidential information by Survey employees must be approved in writing by the Geologic Program Manager supervising the individual requesting access and by the Director.

h. Requests for information from outside the Survey must be in writing with a description of the records requested. The Survey will have thirty days to respond. If the information requested is determined to be confidential, the Survey must state the reason for the determination. A denial of access to confidential information may be appealed to the Board.

i. For the purpose of obtaining information the Survey deems necessary or desirable from the Federal Government concerning the geology pertaining to the lands of Utah, the Director may establish procedures deemed necessary by the Federal source in order to maintain confidentiality consistent with relevant Federal law.

R638-1-4. Procedures.

a. Geologic information will be categorized as follows:

1. Category A: Information that is public and not maintained as confidential.

(a) Survey publications.

(b) Survey open-file reports.

(c) Samples and core accepted for storage.

(d) Inhouse-generated files and computer information unless otherwise covered in Category B.

2. Category B: Information that is temporarily withheld from the public until made available by open filing or publication of the information.

(a) Predecisional documents leading to a geologic explanation or publication.

(b) Manuscripts received from non-Survey sources.

(c) Geologic information and conclusions drawn by the Survey that have been contracted or legislatively mandated for other state agencies.

(d) Determination for Category B information will be made by the Director based upon:

(1) a likelihood that premature release would result in a competitive advantage or disadvantage to an individual or organization;

(2) a likelihood that premature release would result in misuse or harm the public;

(3) a judgement that premature release would compromise the Survey's ability to analyze data, or complete and make public the conclusions of a project in a timely manner.

(e) Category B information may be open-filed at any time by the Director.

3. Category C: Information that is not to be made available to the public except under terms and conditions agreed upon at the time of its acceptance.

(a) Information given to the Survey by other governmental agencies and classified as confidential by them.

(b) Information given to the Survey by private individuals or organizations and classified as confidential by them.

(c) Information purchased by the Survey with the understanding that it will be maintained as confidential.

b. Geologic information designated confidential will be recorded as received by the Survey at the requested level of confidentiality and maintained in locked files with controlled access.

R638-1-5. Anticipated Impacts Regarding Costs of Compliance.

a. This rule applies to geologic information provided voluntarily by individuals or organizations to the Survey. Therefore, sources of information have no mandated costs in order to comply with these provisions.

b. The Survey will budget sufficient funds from its current budget to accomplish the purposes and objectives of this rule.

KEY: disclosure requirements
1993 63-73-4(5)
Notice of Continuation January 16, 2002

R657. Natural Resources, Wildlife Resources.
R657-20. Falconry.
R657-20-1. Purpose and Authority.

Under authority of Section 23-17-7 and in accordance with 50 CFR 21, 2000 ed., which is incorporated by reference, this rule provides the requirements and procedures for possessing and using raptors for falconry.

R657-20-2. Possession of Raptors.

(1) Possession of any raptor, raptor egg, shell fragment, semen, or any raptor part without a federal permit and a valid certificate of registration, and form is prima facia evidence that the raptor, raptor egg, shell fragment, semen, or raptor part was illegally taken and is illegally held in possession.

(2) The only species of raptor that may be possessed, transported, or used for falconry are:

(a) raptors of the subfamily Accipitrinae, other than the bald eagle, Haliaeetus leucocephalus;

(b) raptors of the subfamily Falconinae; and

(c) great horned owl, Bubo virginianus, of the family Strigidae.

R657-20-3. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Eyas" means a nestling, fledgling, or prefledging raptor.

(b) "Falconry" means the sport of taking quarry by means of a trained raptor.

(c) "Imping" means to graft new feathers onto the wing of a bird to repair damage or to increase flying capacity.

(d) "Marker or band" means a numbered band issued by the Service which, when affixed to a raptor's leg, identifies an individual raptor.

(e) "Passage bird" means a flighted raptor of the year.

(f) "Raptor" means a bird of the families Cathartidae, Accipitridae, Falconidae, Tytonidae, and Strigidae.

(g) "Service" means the U.S. Fish and Wildlife Service.

R657-20-4. Federal Requirements.

(1) A federal falconry permit is required before any person may take, possess, transport, sell, purchase, barter, or offer to sell, purchase, or barter raptors for falconry purposes.

(2) Any person engaging in falconry must complete a federal application form in accordance with 50 CFR 21.28.

(3) Applications may be obtained from, and submitted to the U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, CO. 80225.

(4) A falconry permit issued or renewed under 50 CFR 21.28 expires on the date designated on the face of the permit unless amended or revoked, but the term of permit shall not exceed three years from the date of issuance or renewal.

R657-20-5. Resident Certificate of Registration Application.

(1) A resident applying for or renewing a falconry certificate of registration shall:

(a) submit a completed falconry application to the division; and

(b) include the certificate of registration fee.

(2) At the time of renewal, the previous falconry certificate of registration and the federal permit number must be submitted on the falconry application.

R657-20-6. Apprentice Class Falconer.

(1) An apprentice class falconer shall be:

(a) 14 years of age or older; and

(b) sponsored by a general or master class falconer for the first two years of apprenticeship.

(2) An apprentice obtaining their first falconry certificate of registration must answer correctly at least 80 percent of the questions on a supervised examination provided and administered by the division, relating to basic biology, care and handling of raptors, literature, laws, rules, regulations, and other appropriate subject matter.

(3) If necessary, the examination may be taken again after a five-day waiting period.

(4) A person may not take the falconry exam earlier than two months before that person's 14th birthday.

(5) The sponsor shall provide advice for facilities and equipment construction, trapping the first season, training the raptor, and all other activities that will promote adequate care and good health for the raptor and safety for the apprentice. A sponsor may not have more than three apprentices at one time.

(6) In the event sponsorship is terminated, the holder of an apprentice falconry certificate of registration must obtain a new sponsor within 30 days of termination.

(7) The division must be notified in writing concerning the change in sponsor. The sponsor's name, state certificate of registration and federal permit number shall be included in the notification.

(8)(a) Applications for Utah falconry certificates of registration must be submitted to a division office.

(b) Applications for the required federal permit must be made to the Service.

(9) An apprentice may not possess more than one raptor and may not obtain more than one raptor for replacement during any 12-month period from the date of the first capture.

(10) An apprentice may possess only an American kestrel or a red-tailed hawk which must be taken from the wild as a passage bird by the apprentice.

(11) Re-examination and facilities inspection will be required of any applicant who has not held a falconry certificate of registration for two consecutive years.

R657-20-7. General Class Falconer.

(1) A general class falconer shall:

(a) be 18 years of age or older;

(b) have at least 24 months of sponsor-verified experience caring for, training, and hunting with raptors at the apprentice level or its equivalent; and

(c) show proof of having a valid falconry certificate of registration for at least 24 months.

(2) Evidence that the applicant has had a valid raptor license or permit in another state for at least 24 consecutive months may be substituted for the apprentice certificate of registration requirement.

(3) Verification of the 24-month experience requires a letter from the sponsor that details the applicant's progress in

falconry and qualifications for upgrade.

(4) A general class falconer may not:

(a) possess more than two raptors for falconry and may not obtain more than two raptors taken from the wild for replacement birds during any 12-month period from the date of first capture; or

(b) take, transport, or possess a golden eagle or any species listed as threatened or endangered in 50 CFR 17.

R657-20-8. Master Class Falconer.

(1) A master class falconer shall:

(a) have at least 60 months experience in the practice of falconry at the general class level or its equivalent; and

(b) show proof of having a valid general class certificate of registration for at least 60 months.

(2) A master class falconer may not:

(a) possess more than three raptors for falconry;

(b) obtain more than two raptors taken from the wild for replacement birds during any 12-month period from the date of first capture; or

(c) take from the wild:

(i) more than one raptor listed as threatened in 50 CFR 17, in any 12-month period, as part of the three bird limitation, and then only in accordance with 50 CFR 17; or

(ii) any species listed as endangered in 50 CFR 17, but may transport or possess such species in accordance with 50 CFR 17.

(3) A master class falconer may not take from the wild, transport, or possess a golden eagle for falconry purposes unless authorized in writing under 50 CFR 22.24.

(4) Only a master class falconer may possess one golden eagle, Aquila chrysaetos, for falconry purposes pursuant to 50 CFR 22.24, Migratory Bird Permits, and the following guidelines:

(a) A master class registrant shall be sponsored for the first 12 months to use a golden eagle for falconry;

(b) The registrant shall maintain an ongoing dialogue with the sponsor;

(c) The sponsor shall be a master class falconer who has handled a golden eagle for a minimum of 24 months;

(d) A sponsor may not, at any time, sponsor more than one registrant;

(e) The registrant may not obtain or possess more than one golden eagle during a 12-month period; and

(f) A golden eagle held by the registrant is included in the three-bird limitation of the master class falconer in accordance with 50 CFR 17.

R657-20-9. Facilities and Equipment.

(1) Before a person may obtain a falconry certificate of registration, the raptor housing facilities and equipment shall be inspected by a division representative and must be certified as meeting the requirements of this section.

(2)(a) The primary consideration for raptor housing facilities whether indoor mews or outdoor weathering areas is protection from the environment, predators, and undue disturbance.

(b) A person may not possess a raptor without either an indoor facility or an outdoor facility as provided in this rule.

R657-20-10. Indoor Facilities.

(1) An indoor facility or mew must be large enough to allow easy access for caring for the raptor housed in the facility.

(2) If more than one raptor is to be kept in the mew, the raptors must be tethered or separated by partitions and the area for each raptor must be large enough to allow the raptor to fully extend its wings.

(3) There must be at least one window, protected on the inside by vertical bars, spaced narrower than the width of the raptor's body, and a secure door that can be easily closed.

(4) The floor of the mew must permit easy cleaning and be well drained.

(5) Adequate perches must be provided to ensure the health, safety and protection of the raptor.

R657-20-11. Outdoor Facilities.

(1) Outdoor facilities must be fenced and covered with netting or wire, or roofed to protect the raptor from disturbance and attack by predators.

(2) The enclosed area must be large enough to ensure the raptor cannot strike the fence when flying from the perch.

(3) Protection from excessive sun, wind, and inclement weather must be provided for each raptor.

(4) Adequate perches must be provided to ensure the health, safety and protection of the raptor.

R657-20-12. Equipment.

The following items shall be in the possession of the applicant before a permit or certificate of registration can be obtained:

(1)(a) At least one pair of Alymeri jesses or similar type constructed of pliable, high quality leather or suitable synthetic material to be used when any raptor is flown free.

(b) Traditional one-piece jesses may be used on raptors when not being flown.

(2) At least one flexible, weather-resistant leash and one strong swivel of acceptable falconry design.

(3) At least one suitable container, two to six inches deep and wider than the length of the raptor, for drinking and bathing for each raptor.

(4) At least one weathering area perch of an acceptable design for each raptor.

(5) A reliable scale or balance suitable for weighing the raptor held and graduated to increments of not more than one-half ounce.

R657-20-13. Federal Form 3-186A.

A falconer may not take, purchase, receive, or otherwise acquire, sell, barter, transfer, or otherwise dispose of any raptor unless the falconer completes a federal form 3-186A and submits the blue copy to the division and the remaining copies to the Service within five calendar days of the transaction.

R657-20-14. Transfer of Care or Temporary Loan.

(1)(a) A raptor possessed under authority of a falconry certificate of registration may be temporarily held by a person other than the possessor of record for maintenance and care for a period not to exceed 30 days.

(b) The raptor must be accompanied at all times by a

properly completed federal form 3-186A designating the falconer as the possessor of record and by a signed, dated statement from the falconer authorizing temporary possession.

(c) The temporary possessor must hold a valid falconry certificate of registration in the appropriate class designation and have adequate facilities.

R657-20-15. Permanent Transfer.

A falconer may permanently transfer a raptor to:

(1) another falconer of appropriate class designation with a valid falconry certificate of registration and adequate facilities; or

(2) a raptor propagator or special purpose possession permittee who has the appropriate licenses, permits and forms.

R657-20-16. Purchase or Sale of Captive-Bred Raptors.

(1) Only general and master class falconers may purchase or sell captive-bred raptors.

(2) Before a captive-bred raptor is purchased or sold, bartered or gifted it shall be properly banded.

R657-20-17. Importation Requirements for Residents.

(1)(a) A person is not required to obtain an importation certificate of registration to possess a raptor brought into Utah from another state when the raptor is to be used for falconry purposes.

(b) A raptor used for any purpose other than falconry is governed by Rule R657-3.

(2) A copy of a valid health certificate and band number, where applicable, must be presented to the division within five days of the arrival of the raptor into the state.

(3) A health certificate is required from the state of origin regardless of the time period the raptor will be in the state.

R657-20-18. Importation Requirements for Nonresidents.

(1) A falconer may not claim residency in more than one state or possess a resident falconry license or certificate of registration from more than one state.

(2) A nonresident falconer entering the state to establish residency may possess legally obtained raptors during the six-month domicile period while establishing residency.

(3) A copy of the previous state's valid falconry license, a current federal permit number, a valid health certificate and the band number of the raptor held in possession must be presented to the division upon entering the state.

(4) The falconer must have the proper facilities and equipment. A facilities inspection is required.

(5) If the raptor is to be flown or exercised during the six-month domicile period, a valid falconry license from the previous state and a current federal permit are required.

(6) If the raptor is to be used for falconry during the six-month domicile period, a valid falconry license from the previous state, a current federal permit number and the appropriate nonresident game license are required.

R657-20-19. Facilities for Raptors in Transit.

To ensure the health, safety and protection of any raptor being transported or held, temporary facilities must be provided with an adequate perch and protected from extreme temperatures and excessive disturbance, for a period not to exceed 30 days.

R657-20-20. Change of Address.

Any falconer who possesses a raptor and moves or changes the address of where the raptor is being held must first notify the division in writing of the change of address. An inspection of facilities may be required at the new location.

R657-20-21. Release to the Wild.

Prior to releasing any raptor to the wild:

(1) the raptor band shall be removed by a division representative; and

(2) a Bird Banding Laboratory band shall be attached to the raptor by a division representative. Banding is by appointment only.

R657-20-22. Escape or Death.

(1) The division shall be notified upon escape or death of a raptor.

(2) Within five working days of the escape of any raptor, the blue copy of the federal form 3-186A shall be provided to the division.

(3) Within five working days, raptors that die shall be presented to a division representative to have the band removed. The blue copy of the federal form 3-186A shall be provided to the division.

R657-20-23. Feathers.

Feathers that are molted or feathers from raptors held in captivity that die may be retained and exchanged for imping purposes by falconers with a valid certificate of registration.

R657-20-24. Certificate of Registration Renewal Form.

(1) Resident falconers wishing to renew a valid certificate of registration must submit a completed certificate of registration renewal form to the division upon or before the date specified on the certificate of registration.

(2) Resident falconers holding a valid certificate of registration must submit a completed falconry annual report form to the division upon or before the date specified on the certificate of registration.

(3) Residents who do not hold a valid certificate of registration or do not submit a certificate of registration renewal form by the date specified on the certificate of registration and maintain raptors in possession are in violation of unlawful captivity of protected wildlife under Section 23-13-4.

(4) Any raptor not listed on the falconry annual report or certificate of registration renewal form may be seized.

(5) Failure to submit the appropriate records and reports may result in revocation or denial of a certificate of registration.

R657-20-25. Inspection of Raptors, Facilities, Certificates of Registration, and Documents.

As a condition of obtaining a falconry certificate of registration, the falconer agrees to reasonable administrative inspections of raptors, facilities equipment, appropriate permits, licenses, certificates of registration and forms.

R657-20-26. Taking Raptors from the Wild.

(1) A person may not take any raptor from the wild without first obtaining a raptor capture permit from the division.

(2)(a) A raptor may be taken by traps or nets that are humane in their operation and use.

(b) Acceptable devices are the bal-chatri, dho-gazza, harness-type, phi trap, and bow net traps.

(c) Trapping devices must be constantly attended while in use.

(d) Protected wildlife may not be used to capture raptors.

R657-20-27. Capture Permits.

(1)(a) Prior to capturing or attempting to capture any raptor a falconer must obtain a falconry certificate of registration, raptor capture permit and corresponding federal band from a division office.

(b) The raptor capture permit, falconry certificate of registration, and corresponding federal band must be in possession while pursuing, capturing or attempting to capture a raptor.

(2) Raptor capture permits and federal bands are valid for a single raptor of a species allowed in the falconer's class.

(3) Raptor capture permits may be obtained from division offices.

(4) Raptor capture permits and corresponding federal bands are non-transferable and nonassignable and can only be used by the person specified on the permit. Raptor capture permits and corresponding federal bands are valid only for the season specified on the permit.

(5) Nonresidents not participating in the sport of falconry in the state are not required to purchase a Utah falconry certificate of registration or license prior to the purchase of a raptor capture permit.

(6) Falconers shall not retain and transport more than one captured raptor per capture permit.

(7) Any person who does not capture a raptor must return the unused capture permit to the division within five working days of the season closure.

(8) Any person who captures a raptor must have it banded in accordance with Section R657-20-31.

(9) Capture of eyas raptors is permitted only for the following species:

(a) northern harrier, Circus cyaneus;
(b) sharp-shinned hawk, Accipiter striatus;
(c) Cooper's hawk, Accipiter cooperi;
(d) northern goshawk, Accipiter gentilis;
(e) Swainson's hawk, Buteo swainsoni;
(f) red-tailed hawk, Buteo jamaicensis;
(g) ferruginous hawk, Buteo regalis;
(h) golden eagle, Aquila chrysaetos
(i) American kestrel, Falco sparverius;
(j) peregrine falcon, Falco peregrinus;
(k) prairie falcon, Falco mexicanus; and
(l) great horned owl, Bubo virginianus;

(10) Capture of passage raptors is permitted only for the following species:

(a) northern harrier, Circus cyaneus;
(b) sharp-shinned hawk, Accipiter striatus;
(c) Cooper's hawk, Accipiter cooperi;
(d) northern goshawk, Accipiter gentilis;
(e) Harris's hawk, Parabuteo unicinctus;
(f) Swainson's hawk, Buteo swainsoni;
(g) red-tailed hawk, Buteo jamaicensis;
(h) ferruginous hawk, Buteo regalis;
(i) rough-legged hawk, Buteo lagopus;
(j) golden eagle, Aquila chrysaetos
(k) American kestrel, Falco sparverius;
(l) merlin, Falco columbarius;
(m) gyrfalcon, Falco rusticolus;
(n) prairie falcon, Falco mexicanus; and
(o) great horned owl, Bubo virginianus.

R657-20-28. Legal Birds.

(1) Eyasses may be taken from the wild only by general and master class falconers from May 13 through July 21, unless the opening day is a Sunday, in which case the season will begin the following day. No more than two eyasses may be taken by the same falconer.

(2) Passage raptors may be taken from the wild only from:

(a) September 1 through October 31 on weekends and legal holidays; and

(b) November 1 through January 31, unless the opening day is a Sunday, in which case the season will begin the following day.

(3) Only American kestrels and great horned owls may be taken when over one year of age.

(4) An eyas may not be taken from a nest containing only a single eyas.

(5) One or more eyasses shall be left in a nest from which any eyas has been removed.

(6) The division falconry coordinator shall determine on an annual basis the number of capture permits issued for the taking of eyas raptors listed on Utah's sensitive species list. The list will be available on February 1 of each year.

(7) Locations of nests from which an eyas is removed must be recorded precisely on the Raptor Capture Permit. Such information will be held strictly for use by the division and not made available to the public.

R657-20-29. Resident- Legal Birds by Class Designation.

(1)(a) An apprentice class falconer may take from the wild and possess only one American kestrel or one red-tailed hawk.

(b) Only first-year red-tailed hawks may be taken, while American kestrels that are one year of age or older may be taken.

(c) Eyasses may not be taken.

(2) A general class falconer may not possess more than two raptors and may not obtain more than two raptors taken from the wild for replacement birds during a 12-month period.

(3) A master class falconer may not possess more than three raptors and may not obtain more than three raptors taken from the wild for replacement birds during a 12-month period, except golden eagles.

(4) If necessary, a drawing will be held for taking eyas birds listed as Utah's sensitive species that have more applicants than available permits.

R657-20-30. Nonresident- Legal Birds by Class Designation.

(1) A nonresident general or master class falconer may

apply each year to take:

(a) one eyas from the wild from May 13 through July 21, unless the opening day is a Sunday, in which case the season will begin the following day; or

(b) one passage bird from the wild from:

(i) September 1 through October 31 on weekends and legal holidays; and

(ii) November 1 through January 31, unless the opening day is a Sunday, in which case the season will begin the following day.

(2) Application forms are provided by the division and must include:

(a) a copy of a valid falconry license issued by the state of residency indicating the falconry class designation; and

(b) a cashier's check or money order for the appropriate fees.

(3)(a) Applications for taking an eyas must be received through the mail by 5:00 p.m. on the last Friday of February.

(b) If necessary, a drawing will be held for those species that have more applicants than available permits.

(c) Remaining permits will be available to nonresident falconers on a first-come first-served basis after the drawing.

(4) The number of nonresident permits issued annually may not exceed the following:

(a) sharp-shinned hawk, Accipiter striatus 10;

(b) Cooper's hawk, Accipiter cooperi 20;

(c) northern goshawk, Accipiter gentilis 5;

(d) red-tailed hawk, Buteo jamaicensis 20;

(e) American kestrel, Falco sparverius 20;

(f) merlin, Falco columbarius 10, passage take only;

(g) gyrfalcon, Falco rusticolus 5, passage take only;

(h) prairie falcon, Falco mexicanus 20; and

(i) great horned owl, Bubo virginianus 20;

(5) Nonresidents may not take any other species.

R657-20-31. Banding Raptors.

(1)(a) Any falconer who removes a raptor from the wild for falconry purposes must, upon arriving at the falconer's facilities, attach the federal band to the raptor's leg.

(b) Within five working days of the date of capture, a completed Raptor Capture permit and blue copy of the federal 3-186A form must be submitted to the division.

(2) A falconer may remove the rear tab on a band and may smooth any imperfect surface, provided the integrity of the band and numbering are not affected.

(3)(a) A person may not remove, transfer, alter, counterfeit, or deface a raptor band.

(b) A band that is causing damage to a raptor may be removed only if the band is affecting the health or safety of the raptor.

(c) The raptor must be presented to a division representative and a replacement band placed on the raptor's other leg. Banding is by appointment only.

(d) The detached band must be surrendered to the division at the time of remarking.

(4) The division must be notified of any raptor acquired or brought into the state on a permanent basis without a band. The raptor must be presented to a division representative for banding.

(5) A permanent Bird Banding Laboratory band shall be placed on any raptor by a division representative prior to release.

R657-20-32. Recovery of Banded Raptors.

(1) A banded raptor may be recovered at any time.

(2) Notification of recovery must be made to a division representative followed with a written notice within five working days.

(3) The division requires notification of the capture of any raptor marked with a Bird Banding Laboratory band.

R657-20-33. Organized Events.

Any raptor brought into the state must be accompanied by a valid health certificate from the state of origin.

R657-20-34. Meets or Trials.

(1) A nonresident entering Utah to participate in the sport of falconry at an organized meet or trial must first obtain a nonresident falconry meet license.

(2)(a) A falconry meet license may be obtained by completing an application and submitting it to the division.

(b) The application must include:

(i) a valid health certificate from the state of origin; and

(ii) the appropriate fees.

(3) The falconry meet license is valid only for nonresidents and only for five consecutive days as designated on the license.

(4) The holder of a nonresident falconry meet license may engage in the sport of falconry on protected wildlife during the specified five-day period in accordance with the applicable proclamations of the Wildlife Board.

(5) A nonresident participating in an organized meet for more than five consecutive days must obtain appropriate licenses, permits, tags, and stamps as provided in the proclamations of the Wildlife Board if protected wildlife is pursued.

(6)(a) An organizer of a falconry meet or trial must obtain prior approval from the Wildlife Board to conduct the falconry meet or trial.

(b) A falconry meet or trial may not be held on state waterfowl and wildlife management areas from April 1 through August 15, except in those areas approved by the division.

R657-20-35. Use of Propagated Game Birds for Meets and Trials.

(1) A person may hold a meet or trial or may train a raptor using legally propagated and acquired game birds under the following provisions:

(a) The promoter of a meet or trial or a person training a raptor must have an invoice in his possession showing lawful possession of the game birds.

(b) Each game bird must be marked before release with a band purchased from the division. A band must remain attached to each game bird until the game bird is consumed. A person may not use the same band on more than one game bird.

(c) Once a released game bird escapes the raptor it is considered wild and may not again be pursued, except during the open season for that species as specified in the applicable proclamations of the Wildlife Board.

(d) A person may not possess a live game bird for more than 60 days without first obtaining an aviculture certificate of registration.

R657-20-36. Certificates of Registration, Licenses, Permits, and Stamps.

(1) A person must possess a valid federal permit and a valid state falconry certificate of registration or license from their state of residency while engaging in falconry.

(2) The falconry certificate of registration or license allows the person to use a raptor to take coyote, field mouse, gopher, ground squirrel, jackrabbit, muskrat, raccoon, European starling, house sparrow, and rock dove/feral pigeon.

(3) A falconer releasing a raptor on protected wildlife, not held in private ownership, shall obtain the appropriate licenses, permits, tags, certificates of registration and stamps as provided in the applicable proclamations of the Wildlife Board.

(4) A federal waterfowl stamp is required of a person 16 years of age or older to hunt migratory waterfowl.

R657-20-37. Seasons and Bag and Possession Limits.

(1) The hunting of:

(a) upland game shall be done in accordance with the proclamation of the Wildlife Board for taking upland game species.

(b) waterfowl, Wilson's snipe, and coot shall be done in accordance with the proclamation of the Wildlife Board for taking those species.

(c) mourning dove and band-tailed pigeon shall be done in accordance with the proclamations of the Wildlife Board for those species.

(2) Bag and possession limits do not apply to coyote, field mouse, gopher, ground squirrel, jackrabbit, muskrat, raccoon, European starling, house sparrow, and rock dove/feral pigeon.

(3) Nothing in this rule shall be construed to allow the intentional taking of protected wildlife in violation of federal or state laws, rules, regulations, or proclamations.

R657-20-38. Training.

Raptor training is not allowed on state waterfowl and wildlife management areas from April 1 through August 15, unless otherwise authorized.

R657-20-39. Firearms.

A person may not possess a firearm while pursuing any quarry with a raptor.

R657-20-40. Other Uses of Raptors.

(1) A person who possesses a raptor for falconry purposes is not required to obtain a certificate of registration for educational purposes provided money or consideration is not involved.

(2) A person who possesses a raptor for any purpose other than falconry, including raptor propagation, educational uses, and rehabilitation, shall obtain the appropriate authorization from the division as provided in Rule R657-3 and the appropriate authorization from the Service.

KEY: wildlife, birds, falconry*

November 1, 2001 **23-17-7**
Notice of Continuation March 1, 2002 **50 CFR 21**

R657. Natural Resources, Wildlife Resources.
R657-33. Taking Bear.
R657-33-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, of the Utah Code, the Wildlife Board has established this rule for taking and pursuing bear.

(2) Specific dates, areas, number of permits, limits and other administrative details which may change annually are published in the proclamation of the Wildlife Board for taking and pursuing bear.

R657-33-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Bait" means any lure containing animal, mineral or plant materials.

(b) "Baiting" means the placing, exposing, depositing, distributing or scattering of bait to lure, attract or entice bear on or over any area.

(c) "Bear" means Ursus americanus, commonly known as black bear.

(d) "Canned hunt" means that a bear is treed, cornered, held at bay or its ability to escape is otherwise restricted for the purpose of allowing a person who was not a member of the initial hunting party to arrive and take the bear.

(e) "Cub" means a bear less than one year of age.

(f) "Evidence of sex" means the teats, and sex organs of a bear, including a penis, scrotum or vulva.

(g) "Green pelt" means the untanned hide or skin of a bear.

(h) "Pursue" means to chase, tree, corner or hold a bear at bay.

(i) "Waiting period" means a specified period of time that a person who has obtained a bear permit must wait before applying for any other bear permit.

R657-33-3. Permits for Taking Bear.

(1)(a) To take a bear, a person must first obtain a valid limited entry bear permit for a specified management unit as provided in the proclamation of the Wildlife Board for taking bear.

(b) To pursue bear, a person must first obtain a valid bear pursuit permit from a division office.

(2) Any limited entry bear permit purchased after the season opens is not valid until seven days after the date of purchase.

(3) Residents and nonresidents may apply for limited entry bear permits and purchase bear pursuit permits.

R657-33-4. Purchase of License or Permit by Mail.

(1) A person may purchase a bear pursuit permit by mail by sending the following information to the Salt Lake division office: full name, complete mailing address, phone number, date of birth, weight, height, sex, color of hair and eyes, driver's license number (if available), proof of hunter education certification and fee.

(2)(a) Personal checks, cashier's check or money orders will be accepted.

(b) Personal checks drawn on an out-of-state will not be accepted.

(c) Checks must be made payable to the Utah Division of Wildlife Resources.

R657-33-5. Hunting Hours.

Bear may be taken or pursued only between one-half hour before official sunrise through one-half hour after official sunset.

R657-33-6. Firearms and Archery Equipment.

(1) A person may use the following to take bear:

(a) any firearm not capable of being fired fully automatic, except a firearm using a rimfire cartridge; and

(b) a bow and arrows, except a crossbow may not be used.

R657-33-7. Traps and Trapping Devices.

(1) Bear may not be taken with a trap, snare or any other trapping device, except as authorized by the division.

(2) Bear accidentally caught in any trapping device must be released unharmed.

(3)(a) Written permission must be obtained from a division representative to remove the carcass of a bear from any trapping device.

(b) The carcass shall remain the property of the state of Utah and must be surrendered to the division.

R657-33-8. State Parks.

(1) Hunting of any wildlife is prohibited within the boundaries of all state park areas except those designated by the Division of Parks and Recreation in Section R651-603-5.

(2) Hunting with a rifle, handgun or muzzleloader in park areas designated open is prohibited within one mile of all area park facilities, including buildings, camp or picnic sites, overlooks, golf courses, boat ramps and developed beaches.

(3) Hunting with shotguns and archery tackle is prohibited within one quarter mile of the above stated areas.

R657-33-9. Prohibited Methods.

(1) Bear may be taken or pursued only during open seasons and using methods prescribed in this rule and the proclamation of the Wildlife Board for taking and pursuing bear. Otherwise, under the Wildlife Resources Code, it is unlawful for any person to possess, capture, kill, injure, drug, rope, trap, snare, or in any way harm or transport bear.

(2) After a bear has been pursued, chased, treed, cornered, legally baited or held at bay, a person may not, in any manner, restrict or hinder the animal's ability to escape.

(3) A person may not engage in a canned hunt.

(4) A person may not take any wildlife from an airplane or any other airborne vehicle or device or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles.

R657-33-10. 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:

(a) the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed weapon to hunt or take wildlife.

R657-33-11. Party Hunting.

A person may not take a bear for another person.

R657-33-12. Use of Dogs.

(1) Dogs may be used to take or pursue bear only during open seasons as provided in the proclamation of the Wildlife Board for taking bear.

(2) The owner and handler of dogs used to take or pursue bear must have a valid bear permit or bear pursuit permit in possession while engaged in taking or pursuing bear.

(3) When dogs are used in the pursuit of a bear, the licensed hunter intending to take the bear must be present when the dogs are released and must continuously participate in the hunt thereafter until the hunt is completed.

(4) When dogs are used to take a bear and there is not an open pursuit season, the owner and handler of the dogs must have a valid pursuit permit and be accompanied by a licensed hunter as provided in Subsection (3).

R657-33-13. Certificate of Registration Required for Bear Baiting.

(1) A certificate of registration for baiting must be obtained before establishing a bait station.

(2) Certificates of registration are issued only to holders of valid limited entry bear archery permits.

(3) A certificate of registration may be obtained from the division office within the region where the bait station will be established.

(4) The following information must be provided to obtain a certificate of registration for baiting: township, range, section to the nearest 1/4 section, county, drainage, type of bait used, and written permission from the appropriate landowner for private lands or appropriate land management agency for public lands.

(5)(a) The division recommends that any person interested in baiting on any lands administered by the Forest Service or Bureau of Land Management verify that the lands are open to baiting before applying for a limited entry bear archery permit.

(b) Areas which are open to baiting on National Forests are designated on a map which may be obtained from district offices. Baiting locations and applicable travel restrictions must be verified by the district supervisor prior to applying for a certificate of registration.

(c) Areas generally closed to baiting stations by these federal agencies include:

(i) designated Wilderness Areas;

(ii) heavily used drainages or recreation areas; and

(iii) critical watersheds.

(6) A $5 handling fee must accompany the application.

(7) Only hunters listed on the certificate of registration may hunt over the bait station and the certificate of registration must be in possession while hunting over the bait station.

(8) Any person tending a bait station must be listed on the certificate of registration.

R657-33-14. Use of Bait.

(1)(a) A person who has obtained a limited entry bear archery permit may use archery tackle only, even when hunting bear away from the bait station.

(b) A person may establish or use only one bait station. The bait station may be used during both open seasons.

(c) Bear lured to a bait station may not be taken with any firearm or the use of dogs.

(d) Bait may not be contained in or include any metal, glass, porcelain, plastic, cardboard, or paper.

(e) The bait station must be marked with a sign provided by the division and posted within 10 feet of the bait.

(2)(a) Bait may be placed only in areas open to hunting and only during the open seasons.

(b) All materials used as bait must be removed within 72 hours after the close of the season or within 72 hours after the person or persons, who are registered for that bait station harvest a bear.

(3) A person may use nongame fish as bait, except those listed as prohibited in Rule R657-13 and the proclamation of the Wildlife Board for Taking Fish and Crayfish. No other species of protected wildlife may be used as bait.

(4)(a) Domestic livestock or its parts, including processed meat scraps, may be used as bait.

(b) A person using domestic livestock or their parts for bait must have in possession:

(i) a certificate from a licensed veterinarian certifying that the domestic livestock or their parts does not have a contagious disease, and stating the cause and date of death; and

(ii) a certificate of brand inspection or other proof of ownership or legal possession.

(5) Bait may not be placed within:

(a) 100 yards of water or a public road or designated trail; or

(b) 1/2 mile of any permanent dwelling or campground.

(6) Violations of this rule and the proclamation of the Wildlife Board for taking and pursuing bear concerning baiting on federal lands may be a violation of federal regulations and prosecuted under federal law.

R657-33-15. Tagging Requirements.

(1) The carcass of a bear must be tagged in accordance with Section 23-20-30.

(2) The carcass of a bear must be tagged with a temporary possession tag before the carcass is moved from or the hunter leaves the site of kill.

(3) A person may not hunt or pursue bear after the notches have been removed from the tag or the tag has been detached from the permit.

(4) The temporary possession tag:

(a) must remain attached to the pelt or unskinned carcass

until the permanent possession tag is attached; and

(b) is only valid for 48 hours after the date of kill.

(5) A person may not possess a bear pelt or unskinned carcass without a valid permanent possession tag affixed to the pelt or unskinned carcass. This provision does not apply to a person in possession of a properly tagged carcass or pelt within 48 hours after the kill, provided the person was issued and is in possession of a valid permit.

R657-33-16. Evidence of Sex and Age.

(1) Evidence of sex must remain attached to the carcass or pelt of each bear until a permanent tag has been attached by the division.

(2) The pelt and skull must be presented to the division in an unfrozen condition to allow the division to gather management data.

(3) The division may seize any pelt not accompanied by its skull.

R657-33-17. Permanent Tag.

(1) Each bear must be taken by the permit holder to a conservation officer or division office within 48 hours after the date of kill to have a permanent possession tag affixed to the pelt or unskinned carcass.

(2) A person may not possess a green pelt after the 48-hour check-in period, ship a green pelt out of Utah, or present a green pelt to a taxidermist if the green pelt does not have a permanent possession tag attached.

R657-33-18. Transporting Bear.

Bear that have been legally taken may be transported by the permit holder provided the bear is properly tagged and the permittee possesses a valid permit.

R657-33-19. Exporting Bear from Utah.

(1) A person may export a legally taken bear or its parts if that person has a valid license and permit and the bear is properly tagged with a permanent possession tag.

(2) A person may not ship or cause to be shipped from Utah, a bear pelt without first obtaining a shipping permit issued by an authorized division representative.

R657-33-20. Donating.

(1) A person may donate protected wildlife or their parts to another person in accordance with Section 23-20-9.

(2) A written statement of donation must be kept with the protected wildlife or parts showing:

(a) the number and species of protected wildlife or parts donated;

(b) the date of donation;

(c) the license or permit number of the donor and the permanent possession tag number; and

(d) the signature of the donor.

(3) A green pelt of any bear donated to another person must have a permanent possession tag affixed.

(4) The written statement of donation must be retained with the pelt.

R657-33-21. Purchasing or Selling.

(1) Legally obtained tanned bear hides may be purchased or sold.

(2) A person may not purchase, sell, offer for sale or barter a gall bladder, tooth, claw, paw or skull of any bear.

R657-33-22. Waste of Wildlife.

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or their parts in accordance with Section 23-20-8.

(2) The skinned carcass of a bear may be left in the field and does not constitute waste of wildlife, however, the division recommends that hunters remove the carcass from the field.

R657-33-23. Livestock Depredation.

(1) If a bear is harassing, chasing, disturbing, harming, attacking or killing livestock, or has committed such an act within the past 72 hours:

(a) in depredation cases, the livestock owner, an immediate family member or an employee of the owner on a regular payroll, and not hired specifically to take bear, may kill the bear;

(b) a landowner or livestock owner may notify the division of the depredation or human health and safety concerns, which shall authorize a local hunter to take the offending bear or notify a Wildlife Services specialist, supervised by the USDA Wildlife Program; or

(c) the livestock owner may notify a Wildlife Services specialist of the depredation who may take the depredating bear.

(2) Depredating bear may be taken at any time by a Wildlife Services specialist while acting in the performance of the person's assigned duties and in accordance with procedures approved by the division.

(3) A depredating bear may be taken with any weapon authorized for taking bear.

(4)(a) Any bear taken pursuant to this section must be delivered to a division office or employee within 72 hours.

(b) A bear that is killed in accordance with Subsection (1)(a) shall remain the property of the state, except the division may sell a bear damage permit to a person who has killed a depredating bear if that person wishes to maintain possession of the bear.

(c) A person may acquire only one bear annually.

(5)(a) Hunters interested in taking depredating bear as provided in Subsection (1)(b) may contact the division.

(b) Hunters will be contacted by the division to take depredating bear as needed.

R657-33-24. Questionnaire.

Each permittee who receives a questionnaire should return the questionnaire to the division regardless of success. Returning the questionnaire helps the division evaluate population trends, harvest success and other valuable information.

R657-33-25. Taking Furbearers.

(1) Furbearers, including badger, beaver, black-footed ferret, bobcat, fisher, red fox, gray fox, kit fox, lynx, marten, mink, otter, ringtail, skunk, weasel, wolf and wolverine may be taken only in accordance with the Furbearer Proclamation.

(2) A person may not disturb, remove or possess a trap, trapping device or any wildlife held in a trap without first obtaining written permission from the trap owner.

R657-33-26. Taking Bear.

(1) A person may take only one bear during the season and from the limited entry area specified on the permit.

(2)(a) A person may not take or pursue a female bear with cubs.

(b) Any bear, except a cub or a sow accompanied by cubs, may be taken during the prescribed seasons.

(3) Limited entry permits may be obtained by following the application procedures provided in this rule and the proclamation of the Wildlife Board for taking and pursuing bear.

(4)(a) A mandatory orientation course is required for hunters who draw a permit for the following hunts:

(i) South Slope, Yellowstone;

(ii) South Slope, Vernal/Diamond Mountain/Bonanza;

(iii) Nine Mile, Anthro-Range Creek;

(iv) LaSal Mountains, Dolores Triangle;

(v) San Juan;

(vi) Manti, North;

(vii) Manti, South;

(viii) Wasatch Mountains, West; and

(ix) Wasatch Mountains, Currant Creek-Avintaquin.

(b) Hunters will be notified of the orientation date, time and location.

(c) Permits for spring bear hunts will be distributed to successful applicants at the orientation.

(5) Season dates, closed areas and limited entry permit areas are published in the proclamation of the Wildlife Board for taking and pursuing bear.

R657-33-27. Bear Pursuit.

(1) Bear may be pursued only by persons who have obtained a bear pursuit permit. The bear pursuit permit does not allow a person to kill a bear.

(2) Pursuit permits may be obtained at Division offices.

(3) A person may not:

(a) take or pursue a female bear with cubs;

(b) repeatedly pursue, chase, tree, corner or hold at bay the same bear during the same day; or

(c) possess a firearm or any device that could be used to kill a bear while pursuing bear.

(i) The weapon restrictions set forth in Subsection (c) do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing or attempting to utilize the concealed weapon to injure or kill bear.

(4) If eligible, a person who has obtained a bear pursuit permit may also obtain a limited entry bear permit.

(5) When dogs are used to take a bear and there is not an open pursuit season, the owner and handler of the dogs must have a valid pursuit permit and be accompanied by a licensed hunter as provided in Section R657-33-12(3).

(6) Season dates, closed areas and bear pursuit permit areas are published in the proclamation of the Wildlife Board for taking and pursuing bear.

R657-33-28. General Application Information.

(1) A person may not apply for or obtain more than one bear permit for the same year, except as provided in Subsection R657-33-27(3).

(2) A person must be 12 years of age or older by the posting date of the drawing to apply for a bear permit.

(3) Limited entry bear permits are valid only for the management unit and for the specified season designated on the permit.

R657-33-29. Waiting Period.

(1) Any person who purchases a permit valid for the current season, may not apply for a permit for a period of two years.

(2) Any person who draws a permit for the current season, may not apply for a permit for a period of two years.

R657-33-30. Application Procedure.

(1) Applications are available from license agents and division offices.

(2)(a) Group applications are not accepted. A person may not apply more than once annually.

(b) Applicants may select up to five management unit choices when applying for limited entry bear permits. Management unit choices must be listed in order of preference.

(c) Applicants must specify on the application whether they want a limited entry bear permit or a limited entry bear archery permit.

(i) The application may be rejected if the applicant does not specify either a limited entry bear permit or limited entry bear archery permit.

(ii) Any person obtaining a limited entry bear archery permit must also obtain a certificate of registration if intending to use bait as provided in Section R657-33-14.

(3)(a) Applications must be mailed by the date prescribed in the proclamation of the Wildlife Board for taking and pursing bear. Applications filled out incorrectly or received later than the date prescribed in the bear proclamation may be rejected.

(b) If an error is found on an application, the applicant may be contacted for correction.

(c) The opportunity to correct an error is not guaranteed.

(4)(a) Late applications received by the date published in the proclamation of the Wildlife Board for taking bear will not be considered in the drawing, but will be processed for the purpose of entering data into the division's draw database to provide:

(i) future preprinted applications;

(ii) notification by mail of late application and other draw opportunities; and

(iii) re-evaluation of division or third-party errors.

(b) The $5 handling fee will be used to process the late application. Any permit fees submitted with the application will be refunded.

(c) Late applications received after the date published in the proclamation of the Wildlife Board for taking bear, will not be processed and will be returned.

(5) 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.

(6) 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 Section R657-33-32(6)(b).

(7) To apply for a resident permit, a person must establish residency at the time of purchase.

(8) The posting date of the drawing shall be considered the purchase date of a permit.

R657-33-31. Fees.

(1) Each application must include:

(a) the permit fee; and

(b) the nonrefundable handling fee.

(2) Fees must be paid in accordance with Rule R657-42-8.

R657-33-32. Drawings and Remaining Permits.

(1) 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.

(2) Drawing results will be posted at the Lee Kay Center, Cache Valley Hunter Education Center, division offices and on the division Internet address on the date published in the proclamation of the Wildlife Board for taking and pursuing bear.

(3) Permits remaining after the drawing will be sold only by mail or on a first-come, first-served basis beginning and ending on the dates provided in the proclamation of the Wildlife Board for taking and pursuing bear. These permits may be purchased by either residents or nonresidents.

(4) Waiting periods do not apply to the purchase of remaining permits. However, waiting periods are incurred as a result of purchasing remaining permits.

(5)(a) A person may withdraw their application for the bear drawing by requesting such in writing by the date published in the proclamation of the Wildlife Board for taking and pursuing bear.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the Salt Lake Division office.

(6) An applicant may reapply in the limited entry bear drawing provided:

(a) the original application is withdrawn;

(b) the new application is submitted with the request to withdraw the original application;

(c) both the new application and request to withdraw the original application are received by the initial application deadline; and

(d) both the new application and request to withdraw the original application are submitted to the Salt Lake Division office.

(7)(a) An applicant may amend their application for the limited entry bear permit drawing by requesting such in writing by the initial application deadline.

(b) The applicant must send their notarized signature with a statement requesting that their application be amended to the Salt Lake Division office.

(c) The applicant must identify in their statement the requested amendment to their application.

(8) Handling fees will not be refunded.

R657-33-33. Bonus Points.

(1) A bonus point is awarded for a valid unsuccessful application in the drawing.

(2) Bonus points are forfeited if the person obtains a permit, including any permit obtained after the drawing.

(3) Bonus points are not transferable.

(4) Bonus points are tracked by using the applicant's social security number or division-issued hunter identification number.

R657-33-34. Refunds.

(1) Unsuccessful applicants, who applied in the initial drawing and who applied with a check or money order, will receive a refund in May.

(2) Unsuccessful applicants, who applied with a credit card, will not be charged for a permit.

(3) The handling fees are nonrefundable.

R657-33-35. Duplicate License and Permit.

(1) Whenever any unexpired license, 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, or permit, whichever is less.

(2) The division may waive the fee for a duplicate unexpired license, permit, tag or certificate of registration provided the person did not receive the original license, permit, tag or certificate of registration.

KEY: wildlife, bear*, game laws

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Notice of Continuation March 24, 1998	**23-14-19**
	23-13-2

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 buck deer permit is to provide an opportunity for landowners, lessees, or their immediate family, whose property provides habitat for deer, to purchase a general deer permit for 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, whose property provides habitat for deer, elk, or pronghorn, to be allocated a restricted number of permits for a limited entry bull elk, buck deer, or buck pronghorn unit, where the landowner's property is located. 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) private land that is not used in the operation of a Cooperative Wildlife Management Unit;

(iii) private land that is not used in the operation of an elk farm or elk hunting park;

(iv) 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

(v) for the purpose of receiving general buck deer permits, a minimum of 640 acres of private land owned or leased by one landowner within the general regional hunt boundary; or

(vi) private land, including crop land owned by members of a landowner association for limited entry permits.

(b) "Immediate family" means the landowner's or lessee's spouse, children, son-in-law, daughter-in-law, father, mother, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, stepchildren, and grandchildren.

(c) "Landowner" means any person, partnership, 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.

(d) "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.

(e) "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.

(f) "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.

(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 Landowner Buck Deer Permits.

(1) The director, upon approval of the Wildlife Board, may establish a number of general landowner buck deer permits within each region to be offered to eligible landowners or lessees for the general deer hunting season only.

(2) Only private lands will be considered in qualifying for general landowner buck deer permits. Public or state lands are not eligible.

(3) Crop lands will be considered in qualifying for general landowner buck deer permits if the crop lands provide habitat for deer and contribute to meeting unit management plan objectives.

(4) General landowner buck deer permits are limited to resident or nonresident landownersor lessees, and members of their immediate family.

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, per species, 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 Landowner Buck Deer Permits.

(1) Applications for general landowner buck deer permits are available from Division offices.

(2) Only one eligible landowner or lessee may submit an application for the same parcel of land within the respective general regional hunt boundary area.

(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) In cases where the landowner's or lessee's land is in more than one general regional hunt boundary area, the landowner or lessee may select one of those regions from which to receive the permit.

(6) A $5 non-refundable handling fee must accompany each application.

(7) Applications will be available by January 7.

(8) Applications must be completed and returned to the regional Division office.

(9) The 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, with said signature serving as an affidavit certifying ownership;

(c) a distribution plan for the allocation of limited entry permits by the association;

(d) a copy of the association by-laws; and

(e) 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 appropriate Division office 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 landowner buck deer permits may be available to a landowner or lessee:

(a) one general landowner buck deer permit may be issued for eligible property of 640 acres; and

(b) one additional general landowner buck deer permit may be issued for each additional 640 acres of eligible property.

(c) If an individual has both owned and leased eligible property, the acreage may be combined in determining the number of permits to be issued.

(2) Permittees may select only one general landowner buck deer permit (archery, rifle or muzzleloader) as provided in the proclamation of the Wildlife Board for taking big game.

(3)(a) General landowner buck deer permits are for personal use only and may not be transferred to any other person.

(b) If the landowner or lessee is a corporation, the person eligible for the permit must be a shareholder, or immediate family member of a shareholder, designated by the corporation.

(4) Any person who is issued a general landowner buck deer permit under this rule is subject to all season dates, weapon restrictions and any other regulations as provided in the proclamation of the Wildlife Board for taking big game.

(5) The fee for a general landowner buck deer permit is the same as the fee for a general season, general archery or general muzzleloader buck deer permit.

(6) Nothing in this rule shall be construed to allow any person to obtain more than one general buck deer permit from any source or take more than one buck deer during any one year.

(7) Permits will be issued beginning in June, in the order that applications are received, and permits will continue to be issued until all permits for each region have been issued.

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 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 Division 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 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*
June 4, 2001 23-14-18

Notice of Continuation March 1, 2002 23-14-19

R657. Natural Resources, Wildlife Resources.
R657-49. Big Game Conservation Easements on Former School Trust Lands.
R657-49-1. Purpose and Authority.

This rule establishes how the Division of Wildlife Resources shall use Legislative appropriations specified for big game conservation easements on lands disposed of after July 1, 2001, by the School and Institutional Trust Lands Administration.

R657-49-2. Definitions.

(1) "Big game habitat interest" means land and habitat of sufficient big game management value that the Division may work to secure a conservation easement on the property, using funds appropriated specifically for this purpose.

(2)(a) "Conservation easement" means a recorded deed conveying partial property rights, as defined in the Land Conservation Easement Act, Section 57-18-1 through Section 57-18-7.

(b) For the purposes of this rule, conservation easements shall convey or restrict one or more rights, including but not limited to:

(i) grazing management;

(ii) range management;

(iii) timber management;

(iv) building and development;

(v) aquatic and terrestrial habitat restoration or improvement;

(vi) surface disturbance;

(vii) hunting and fishing;

(viii) commercial activities;

(ix) game farming;

(x) public access; or

(xi) alternative land uses.

(c) The Division or its designee shall hold the easement.

(3) "Criteria" mean the specific attributes by which the Division will rank competing proposals for the same tract of property, if more than one qualifying proposal is submitted for that tract, which the Division identifies as a priority big game habitat interest.

(4) "Proposal" means a printed document, signed by the proponent, in which the tax paying private party identifies specific tracts they would purchase at a proposed price, if the Division were to secure a big game conservation easement on those tracts.

(5) "SITLA" means School and Institutional Trust Lands Administration.

R657-49-3. Public Notification and Request for Partnership Proposals.

(1) The Division may seek partnerships with parties that, as the owner of the fee interest in qualifying lands encumbered by a Conservation Easement under this rule, shall be subject to real estate property tax.

(2) A broadly distributed legal notice inviting proposals shall be published in newspapers of general circulation throughout the state.

(3) To further advertise this opportunity to benefit from public funds, the notice may be presented once annually at a Wildlife Board meeting.

R657-49-4. Division Determination of Big Game Habitat Interests.

The Division shall determine and evaluate as provided in Section R657-49-6, within the Division's budget, big game habitat interests on lands disposed of, or to be disposed of, by SITLA. Nothing in this rule affects any authority held by SITLA or their Board of Trustees.

R657-49-5. Specific Properties - Habitat Council Review – Director's Approval.

(1) In the event the Division determines a big game habitat interest on lands disposed of by SITLA, the Division shall evaluate the potential to use specific appropriations for conservation easements.

(2) The Division may seek Habitat Council review and recommendation prior to the Director's decision of whether to pursue a particular conservation easement.

R657-49-6. Criteria - Basis for Award.

(1) In the event two or more applicants submit qualifying proposals for the same tract holding big game habitat interests, the criteria provided in Subsection (a) through Subsection (f) shall be used to evaluate which, if any, proposal may be accepted:

(a) demonstrated conservation ethic by proponent;

(b) demonstrated experience managing rangeland to benefit wildlife;

(c) ownership of adjacent or adjoining rangelands;

(d) acceptance of easement restrictions and conditions that offer the greatest habitat protection and enhancement opportunities for big game and other wildlife species;

(e) acceptance of easement conditions that afford public access to the property for outdoor recreational opportunities;

(f) cost of acquiring the easement; and

(g) resource conflicts or benefits associated with surrounding landowners.

R657-49-7. Basis of Valuation – Handling of Payments.

(1) For purposes of this rule, the Division shall buy and sell property on the basis of privately prepared, market-based, self-contained appraisal reports, which meet Uniform Standards of Professional Appraisal Practice guidelines and are subject to professional appraisal review by a second private appraiser.

(2) The Division typically shall not purchase a conservation easement pursuant to this rule at a value in excess of its appraised value, except as that appraised value may be adjusted by the original appraiser following appraisal review. The Wildlife Board may approve exceptions to this practice in special circumstances where sufficient rationale is provided.

(3) In the event the proponent bids and pays a sum in excess of the negotiated purchase price for the entire fee simple estate, without the conservation easement encumbrance, the excess funds will be transferred to SITLA at closing.

R657-49-8. Reporting of Results.

The Division may report annual partnership program success to the Wildlife Board during the meeting at which

public notice is given of the subsequent year's request for proposals.

KEY: wildlife, big game conservation easements
February 26, 2002 **23-14-19**
57-18-2

R657. Natural Resources, Wildlife Resources.
R657-51. Youth Permits.
R657-51-1. Purpose and Authority.

(1) Under the authority of Sections 23-14-18 and 23-14-19 of the Utah Code, this rule provides the standards and requirements for issuing youth permits.

(2) Youth permits are authorized by the Wildlife Board and issued by the division through conservation organizations for purposes of introducing and promoting hunting recreation among youth.

(3) This rule is intended as authorization to issue one series of youth permits for the 2002 hunting season through conservation organizations.

R657-51-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Conservation organization" means a nonprofit chartered institution, foundation, or association founded for the purpose of promoting wildlife conservation and has established tax exempt status under Internal Revenue Code, Section 501(c)(3), as amended.

(b) "Conservation organization group" means a collective of conservation organizations cooperatively working together under agreement to promote youth participation in hunting recreation and responsible for distributing opportunities to obtain youth permits.

(c) "Youth" means a person that is eligible to hunt and that person is between the ages of 14 and 19, inclusive as of August 1, 2002.

(d) "Youth Permit" means a permit, which allows a youth to hunt:

(i) a specified big game species on a specified unit during the established season for each species as authorized by the Wildlife Board;

(ii) a cougar, bear or turkey on a specified unit during the established season for each species as authorized by the Wildlife Board.

(e) "Youth Permit series" means a package of permits comprised of big game, cougar, bear or turkey as authorized by the Wildlife Board.

R657-51-3. Youth Permit Authorization.

(1) Youth permits may be authorized by the Wildlife Board only for:

(a) buck deer;

(b) bull elk;

(c) buck pronghorn;

(d) bear;

(e) cougar; and

(f) wild turkey.

(2) Youth permits for each species authorized by the Wildlife Board shall be issued to the successful youth applicants selected by the conservation organization group.

(3) A youth permit shall not be issued for any particular species or on any particular unit where so doing will harm the long-term health and viability of the species population on that unit or in the state as a whole.

R657-51-4. Application Process.

(1) Youth permit series are available for distribution through conservation organization groups collectively operating for the purpose of promoting youth participation in hunting recreation.

(2) Conservation organization groups may apply to distribute the opportunity for youth to obtain youth permits by sending an application to the division by February 15.

(3) The application must be submitted to the division to be considered for the year 2002 permits. Each application must include:

(a) the name, address and telephone number of the conservation organization group's representative;

(b) the name of each conservation organization participating in the conservation organization group;

(c) verification of each participating conservation organization's tax exempt status under Internal Revenue Code, Section 501(c)(3), as amended; and

(d) a copy of the agreement between the participating conservation organizations designating the conservation organization group's representative, and defining its mission statement and applicant selection process;

(e) the number of youth permits requested, broken down by species and hunting unit; and

(f) the number and type of youth permits that will be reserved exclusively for Utah residents.

(4) An application which is incomplete or completed incorrectly may be rejected.

(5) The Wildlife Board shall determine the number of youth permits, including the species, season length and hunting unit for each authorized youth permit.

R657-51-5. Allocation of Youth Permits.

(1) The conservation organization group selected to distribute the opportunity to receive youth permits:

(a) shall accept and process applications from youth desiring to obtain a youth permit;

(b) may collect from each person applying for a youth permit a reasonable application fee that does not exceed the direct per capita cost of administering the application process, and in no event shall the fee exceed five dollars;

(c) shall not assess or require any form of financial remuneration, other than the application fee described in Subsection (1)(b), as a prerequisite to submitting an application for a youth permit;

(d) shall accept no more than one youth permit application per youth;

(e) shall establish and administer an equitable and fair process for selecting applicants to receive youth permits;

(f) shall ensure that Utah resident applicants are eligible to receive any of the youth permits, and reserve at least 25% of the youth permits exclusively for Utah resident applicants.

(g) shall submit a written certification to the Division no later than July 15th:

(i) identifying a successful applicant for each youth permit authorized by the Wildlife Board, including each applicant's social security number or hunter identification number, name, address, phone number, date of birth, height, weight, hair color, eye color, gender, proof of hunter education, and drivers license

number (if applicable);

(ii) signed by the conservation organization group's representative and each constituent conservation organization in the group verifying that each is satisfied with the selection process used to designate the youth permit recipients, and with the youth identified in the certification to receive youth permits; and

(h) accept applications and conduct the application selection process in accordance with all applicable state, federal and local laws.

(2) Upon receipt of the certification and collection of the appropriate permit fees for each successful applicant, the Division will issue the youth permits to each youth designated in the certification, provided each youth is eligible under Utah law to hunt the species of animal identified on the permit.

(3)(a) Youth permit fees shall be required consistent with the regular fee schedules established by the Wildlife Board and the Division for an equivalent permit had it been obtained outside the youth permit process.

(b) Nonresident permit fees shall be required of each successful applicant that is not a resident of Utah as defined in Section 23-13-2.

R657-51-6. Surrender or Transfer of Youth Permit Designation.

(1) If a successful applicant designated by the conservation organization group to receive a youth permit already possesses a Utah permit for the same species of animal that year, or is otherwise unable to participate in the hunt and utilize the youth permit, the conservation organization group may designate another youth from the pool of applicants to receive the youth permit, provided the youth permit has not been issued by the division to the first selected person, except as provided in Rule R657-42.

(2) If the youth already possess a Utah permit for the same species, the youth must surrender one of the permits in accordance with Rule R657-42.

(3) Except as otherwise provided in Subsection (1), a person designated by a conservation organization group as the recipient of a youth permit, may not sell or transfer the rights to that designation to any other person.

R657-51-7. Using a Youth Permit.

(1) A youth permit allows the recipient to:

(a) take only the species and sex printed on the permit; and

(b) take the species only in the area and during the season specified on the permit.

(2) The recipient of a youth permit is subject to all of the provisions of Title 23, Wildlife Resources Code, and the rules and proclamations of the Wildlife Board for taking and pursuing wildlife.

(3) Bonus points shall not be awarded or utilized when applying for or obtaining youth permits.

(4) Any youth who obtains a youth permit is not subject to the waiting periods set forth in Rules R657-5, R657-6, R657-10 and R657-33.

KEY: wildlife, wildlife permits
February 26, 2002 **23-14-18**

R810. Regents (Board of), University of Utah, Parking and Transportation Services.
R810-2. Parking Meters.
R810-2-1. Parking Meters.

Payment for the use of meters is required whether or not the vehicle displays a current University permit.

Parking at a broken meter is restricted to the time shown on the meter. Violators will be ticketed. Enforcement hours for University parking meters are 8 a.m. to 6 p.m. Monday through Friday.

KEY: parking facilities
1992 **53B-3-103**
Notice of Continuation February 27, 2002 **53B-3-107**

R810. Regents (Board of), University of Utah, Parking and Transportation Services.
R810-6. Permit Prices and Refunds.
R810-6-1. Prices.

Permit prices are subject to change upon approval of the University Administration and Board of Trustees.

R810-6-2. Prorations.

Annual permits are purchased for one academic year. The purchase price may be prorated according to the divisions of the academic year as determined by the University.

R810-6-3. Expiration.

All permits expire on the date designated on the permit.

R810-6-4. Refunds.

A partial refund may be obtained for an unused annual permit provided it is returned to Parking Services before it is six months old.

KEY: parking facilities

June 19, 1997	**53B-3-103**
Notice of Continuation March 1, 2002	**53B-3-107**

R810. Regents (Board of), University of Utah, Parking and Transportation Services.
R810-9. Contractors and Their Employees.
R810-9-1. Contractors and Their Employees.

Parking Services may establish temporary parking areas for contractors and their employees during construction projects. All other vehicles parked in such designated areas will be ticketed. Contractors responsible for construction and repair work on campus who wish parking privileges must first obtain the approval of the University's Campus Planning Department. Upon start of the project, the project coordinator shall arrange for parking. Contractors and their employees must register their vehicles according to the arrangements made and must park in accordance with University regulations or parking tickets will be issued.

KEY: parking facilities

1987	**53B-3-103**
Notice of Continuation March 1, 2002	**53B-3-107**

R810. Regents (Board of), University of Utah, Parking and Transportation Services.
R810-10. Enforcement System.
R810-10-1. Responsibility.

Parking tickets are issued to registered owners of vehicles or registered permit holders. Tickets are not excused on the plea that another person was driving the vehicle.

A. To keep registration information current, any change in license plates must be immediately reported to Parking Services.

R810-10-2. Hours Of Enforcement.

Parking regulations are enforced year-round, including periods between quarters. Permit parking is enforced from 7 a.m. to 6 p.m. Monday through Friday and until 10 p.m. where posted. Parking meters are enforced from 8 a.m. until 6 p.m. Monday through Friday. Permit areas and meters are not regulated on state holidays. Fire lanes, restricted areas, designated reserved spaces and parking spaces for the disabled are enforced 24 hours every day of the year.

Multiple citations may be issued to violators who remain illegally parked for three hours or more at parking meters and loading zones.

R810-10-3. University Violation Fee Payment and Penalties.

1. Fees are charged for late payment in accordance with amounts listed on the ticket. Vehicles with three or more unpaid tickets will be impounded and towed at the owners expense. The University may also apply other remedies listed below. When applicable, additional charges associated with these actions will be assessed. Partial payment will not satisfy the debt.

A. Students.

1. Registration Holds. Students will not be allowed to register until all outstanding parking tickets have been paid. It is the student's responsibility to notify Parking and Transportation Services of any address change. Parking tickets will not be excused due to incorrect addresses.

2. Registration Cancellation. Students who register without clearing all parking tickets will have their registration canceled unless the tickets are cleared within 10 days of receiving notice of such tickets.

3. Transcripts of credits are withheld for students leaving the University with delinquent parking tickets.

4. Other actions, to include collections referrals and redress through the court system, may be used.

B. Staff and faculty. In the event an employee fails to pay assessed violation fees within 30 days, the fees will be withheld from the employee's pay. Other actions, to include collections referrals and redress through the court system, may be used.

C. Others. In the event the assessed violation fees are not paid, the University will take action necessary to collect such fees. Actions will include collections referrals and redress through the court system.

KEY: parking facilities
1994 **53B-3-103**
Notice of Continuation March 1, 2002 **53B-3-107**

R810. Regents (Board of), University of Utah, Parking and Transportation Services.
R810-11. Appeals System.
R810-11-1. Appealing Parking Tickets.

Appeals for parking tickets must be made to the Appeals Office in person or in writing up to the time a small claims affidavit has been filed.

The decision of the hearings officer may be appealed to the Campus Parking Ticket Appeals Committee after the ticket has been paid.

The Campus Parking Ticket Appeals Committee is the final step in the appeals process.

Once a small claims affidavit has been filed, no appeals can be made to the Appeals Office or the Campus Parking Ticket Appeals Committee. All appeals must be made through the Utah court system.

KEY: parking facilities
1994 **53B-3-103**
Notice of Continuation March 1, 2002 **53B-3-107**

R850. School and Institutional Trust Lands, Administration.
R850-41. Rights-of-Entry.
R850-41-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Sections 53C-1-302(1)(a)(ii) and 53C-4-101(1) which authorize the Director of the School and Institutional Trust Lands Administration to establish criteria by rule for the sale, exchange, lease or other disposition or conveyance of Trust Lands Administration lands including procedures for determining fair-market value of those lands.

R850-41-150. Planning.

Pursuant to Section 53C-2-201(1)(a), this category of activity carries no planning obligations by the agency beyond existing rule-based analysis and approval processes.

R850-41-200. Rights-of-Entry on Trust Lands Administration Lands.

1. The agency may issue non-exclusive right-of-entry permits on Trust Lands Administration lands when the agency deems it consistent with agency rules and trust responsibilities.

2. Commercial use of Trust Lands Administration lands: a right-of-entry permit shall be required for any person to use, occupy, or travel upon Trust Lands Administration land in conjunction with any commercial enterprise without regard to the incidental nature of the use, occupancy, or travel, except that a right-of-entry permit shall not be necessary when the use, occupancy, or travel is across authorized public roads or permitted under some other land use authorization issued by the agency and currently in effect.

3. Non-commercial use of Trust Lands Administration land shall not require a permit provided that the use shall not exceed 15 consecutive days and shall not conflict with an applicable land use or with a management plan. At the conclusion of the 15-day period, any personal property, garbage, litter, and associated debris must be removed by the user. The use may not be relocated on any other Trust Lands Administration land within a distance of at least two miles from the original site or be allowed to reestablish at the original site for 20 consecutive days. If, for any reason, a non-commercial, incidental user desires a document authorizing the use, the agency may issue a Letter of Authorization upon payment of an administrative charge.

4. Non-commercial uses of Trust Lands Administration land exceeding 15 consecutive days will require a right-of-entry permit.

R850-41-300. Rights-of-Entry Acquired by Application.

Rights-of-entry on Trust Lands Administration lands may be acquired only by application and grant made in compliance with the rules and laws applicable thereto. All applications shall be made on agency forms. The filing of an application form is deemed to constitute the applicant's offer to purchase a right-of-entry under the conditions contained in these rules.

R850-41-400. Valuable Consideration for Right-of-Entry Permits.

The consideration for any right-of-entry permit granted under these rules, including those granted to municipal or county governments or agencies of the state or federal government, shall be determined pursuant to R850-41-600.

R850-41-500. Agency Contractors.

Any person doing work for the agency under a contract or other permit may enter upon Trust Lands Administration lands for the purpose and period of time authorized by the contract or other permit without obtaining a right-of-entry.

R850-41-600. Right-of-Entry Fees.

The agency shall establish minimum fees for right-of-entry permits which may be based on the cost incurred by the agency in administering the right-of-entry permit and the fair-market value of a proposed land use.

R850-41-700. Application Procedures.

1. Time of Filing. Applications for right-of-entry permits are received for filing in the office of the agency during office hours. Except as provided, all applications received, whether by U.S. Mail or delivery over the counter, are immediately stamped with the exact date of filing.

2. Non-refundable Application Fees. All applications must be accompanied with a non-refundable application fee as specified in R850-4. After review of the application, the agency shall notify the applicant of the fee pursuant to R850-41-600. Failure to pay the fee within 15 days of mailing of notification shall cause the denial of the application.

3. Refunds and Withdrawals of Applications.

(a) If an application for a right-of-entry permit is rejected, all monies tendered by the applicant, except the application fee, will be refunded.

(b) Should an applicant desire to withdraw the application, the applicant must make a written request. If the request is received prior to the time that the application is approved, all monies tendered by the applicant, except the application fee, will be refunded. If the request for withdrawal is received after the application is approved, all monies tendered are forfeited to the agency, unless otherwise ordered by the director for a good cause shown.

4. Application Review.

(a) Upon receipt of an application, the agency shall review the application for completeness. The agency shall allow all applicants submitting incomplete applications at least 15 days from the date of mailing of notice as evidenced by the certified mailing posting receipt (Postal Service form 3800), within which to cure any deficiencies. Incomplete applications not remedied within the designated time period may be denied.

(b) Application approval by the director constitutes acceptance of the applicant's offer.

R850-41-800. Term of Rights-of-Entry.

Rights-of-entry granted under these rules shall normally be for no greater than a one year term. Longer terms may be granted upon application based on a written finding that such a grant is in the best interest of the trust beneficiaries.

R850-41-900. Conveyance Documents.

Each right-of-entry shall contain provisions necessary to

ensure responsible surface management, including the following provisions: the rights and responsibilities of the permittee, rights reserved to the permitter; the term of the right-of-entry; payment obligations; and protection of the Trust Lands Administration from liability for all action of the permittee.

R850-41-1000. Bonding Provisions.

1. Prior to the issuance of a right-of-entry, or for good cause shown at any time during the term of the right-of-entry, upon 15 days' written notice, the applicant or permittee may be required to post with the agency a bond in the form and amount as may be determined by the agency to assure compliance with all terms and conditions of the right-of-entry.

2. Bonds posted on rights-of-entry may be used for payment of all monies, rentals, royalties due to the permitter, reclamation costs, and for compliance with all other terms, conditions, and rules pertaining to the right-of-entry.

3. Bonds may be increased or decreased in reasonable amounts, at any time as the agency may decide, provided the agency first gives permittee 15 days' written notice stating the increase and the reason(s) for the increase.

4. Bonds may be accepted in any of the following forms at the discretion of the agency:

(a) Surety bond with an approved corporate surety registered in Utah.

(b) Cash deposit. However, the Trust Lands Administration will not be responsible for any investment returns on cash deposits.

(c) Certificates of deposit in the name of "School and Institutional Trust Lands Administration and Permittee, c/o Permittee's address", with an approved state or federally insured banking institution registered in Utah. The certificate of deposit must have a maturity date no greater than 12 months, be automatically renewable, and be deposited with the agency, the permittee will be entitled to and receive the interest payments. All certificates of deposit must be endorsed by the permittee prior to acceptance by the director.

(d) Other forms of surety as may be acceptable to the agency.

(e) Due to the temporary nature of rights-of-entry, if the agency imposes or increases the amount of a bond, a stop-work order may be issued by the agency to insure the adequacy of the bond prior to the completion of work or activities authorized by the right-of-entry permit.

R850-41-1100. Conflicts of Use.

The agency reserves the right to issue additional rights-of-entry or convey other interests in property on Trust Lands Administration land encumbered by existing rights-of-entry without compensation to the permittee.

R850-41-1200. Amendments.

Any holder of an existing right-of-entry permit desiring to change any of the terms thereof, shall make application following the same procedure as is used to make an application for a new right-of-entry. An amendment fee pursuant to R850-4 must accompany the amendment request along with other appropriate fees.

R850-41-1300. Unauthorized Uses.

A right-of-entry permit does not authorize a permittee to cut any trees or remove or extract any natural, cultural, or historical resources.

R850-41-1310. Prevention of the Spread of Noxious Weeds.

1. In an effort to halt the spread of noxious weeds, trust lands are closed to:

(a) the possession, use or storage of hay, straw, or mulch which has not been certified as noxious weed free or noxious weed seed free, and

(b) the possession, use or storage of supplemental grain or grain products which do not meet the requirements of the "Utah Commercial Feed Act" standards.

2. These restrictions do not apply to:

(a) the use of pelletized feed by authorized occupants on trust lands,

(b) persons with Modified Grazing Permits or Agricultural Special Use Leases that provide for the use of these materials, or

(c) persons with authorization pursuant to R850-50-600(6).

R850-41-1400. Right-of-Entry Assignments.

1. A right-of-entry may be assigned to any person, firm, association, or corporation qualified under R850-3-200, provided that the assignments are approved by the agency; and no assignment is effective until approval is given. Any assignment made without such approval is void.

2. An assignment shall take effect the day of the approval of the assignment. On the effective date of any assignment, the assignee is bound by the terms of the easement to the same extent as if the assignee were the original grantee, any conditions in the assignment to the contrary notwithstanding.

3. An assignment must be a sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the easement number, and land involved, and the name and address of the assignee.

4. An assignment shall be executed according to agency procedures.

R850-41-1500. Termination of Rights-of-Entry.

Any right-of-entry permit granted by the agency on Trust Lands Administration land may be terminated in whole or in part for failure to comply with any term or condition of the conveyance document or applicable laws or rules. Based on a written finding, the director shall issue an appropriate instrument when terminating the right-of-entry for cause.

KEY: natural resources, management, administrative procedure

February 15, 2002 53C-1-302(1)(a)(ii)

Notice of Continuation December 12, 2001 53C-2-201(1)(a)

53C-4-101(1)

R865. Tax Commission, Auditing.
R865-6F. Franchise Tax.
R865-6F-1. Corporation Franchise Privilege - Right to Do Business - Nature of Liability and How Terminated Pursuant to Utah Code Ann. Sections 16-10a-1501 through 16-10a-1533.

A. The Utah franchise tax is imposed upon corporations qualified or incorporated under the laws of Utah, whether or not they do business therein, and also upon corporations doing business in Utah, whether or not they are qualified or incorporated under the laws of Utah.

1. An unqualified foreign corporation doing business in this state is liable for Utah corporation franchise tax in the same amount as if it had duly applied for and received a certificate of authority to transact business in this state pursuant to Section 16-10a-1501.

2. An unqualified foreign corporation deriving income from this state, but not doing business in this state within the contemplation of the Utah corporation franchise tax law is subject to the Utah corporation income tax on income derived from this state under the provisions of Sections 59-7-201 to 59-7-207.

B. If a corporation received its corporate authority to do business in Utah prior to January 1, 1973, and is a member of an affiliated group filing a combined report under Section 59-7-402 or 59-7-403, and legally terminates its corporate authority, it must include its activity during the final year in the combined report of the group. The tax is imposed upon the income of the group rather than the income of the individual corporations.

C. A corporation that was incorporated, qualified, or that reinstated its corporate authority to do business in Utah after January 1, 1973 must file a corporation franchise tax return and pay the tax due with the return for the year in which it legally terminates its right to do business in this state. The Tax Commission shall not issue a tax clearance certificate until the final return has been filed and the amounts due for the final year are paid.

D. For Utah corporation franchise tax purposes, a foreign corporation terminates its corporate existence or the privileges for which the franchise tax is levied (unless it continues to do business) on the date on which:

1. a certificate of withdrawal is issued under the provisions of Section 16-10a-1520;

2. its corporate existence is legally terminated in its home state, provided authoritative evidence of that termination is filed;

3. a certificate of revocation of its authority to transact business in this state is issued under the provisions of Sections 16-10a-1530 and 16-10a-1531; or

4. the corporate powers, rights, and privileges are forfeited under the provisions of Section 59-7-534.

E. For Utah corporation franchise tax purposes, a corporation that is incorporated under the laws of this state terminates its corporate existence or the privilege of exercising its corporate franchise for which the franchise tax is levied on the date on which:

1. a certificate of dissolution is issued pursuant to a voluntary dissolution under the provisions of Section 16-10a-1401 or Sections 16-10a-1402 through 16-10a-1403;

2. a decree of dissolution is entered by the court pursuant to the provisions of Sections 16-10a-1430 through 16-10a-1433;

3. a certificate of merger or of consolidation (which effects the termination of the separate corporate existence of the Utah corporation) is issued pursuant to the provisions of Sections 16-10a-1101 through 16-10a-1107; or

4. the corporate rights and privileges are suspended under the provisions of Section 59-7-534.

F. If the corporation continues to do business in this state subsequent to any of the above dates, it is liable for franchise tax, even though doing business is not authorized, or may even be prohibited, by law. A corporation cannot avoid the franchise tax by doing business without authority which, if legally done, would subject the corporation to the tax.

R865-6F-2. Establishment of Taxable Year and Filing the First Return Pursuant to Utah Code Ann. Sections 59-7-501 and 59-7-505.

A. The period for which a corporation must file its returns for corporation franchise tax purposes is the same period under which its income is computed pursuant to Section 59-7-501.

B. The first return may cover a period of less than 12-calendar months, but may not exceed 12-calendar months. The period must end on the last day of a calendar month, except that the Tax Commission will accept returns being made using the 52-53 week method of reporting under Section 441(f), Internal Revenue Code.

C. If a corporation elects for federal purposes to end its filing period on a date that does not fall on the last day of a calendar month, the filing period for the purposes of effective dates of Utah laws ends on the last day of the month nearest to the federal year end. The Utah net income is computed based on the filing period for federal purposes, notwithstanding the Utah filing period ends on the last day of the month.

D. Except as provided in Section 59-7-505(8)(a), in the case of a domestic corporation, the first return period begins with the date of incorporation. Activity prior to date of incorporation must be reported on individual income or partnership returns or of such other entity as may be appropriate.

E. Except as provided in Section 59-7-505(8)(a), in the case of a foreign corporation, the first return period begins with the date the corporation is qualified to do business in Utah under Title 16, Chapter 10a, Part 15, or the date business within the state is commenced, whichever is the earlier.

R865-6F-6. Application of Corporation Franchise or Income Tax Acts to Qualified Corporations and to Nonqualified Foreign Corporations Pursuant to Utah Code Ann. Section 59-7-104.

A. Definitions.

1. "Ancillary activities" means those activities that serve no independent business function for the seller apart from their connection to the solicitation of orders.

2. "De minimis activities" means those activities that, when taken together, establish only a trivial connection with the taxing state. An activity conducted within Utah on a regular or systematic basis or pursuant to a company policy, whether or not in writing, shall not normally be considered trivial.

3. "In-home office" means an office or place of business located within the residence of the employee or representative of a company that satisfies the following conditions:

a) The office may not be publicly attributed to the company, or to the employee or representative of the company in an employee or representative capacity.

b) The use of the office shall be limited to soliciting and receiving orders from customers; transmitting orders outside the state for acceptance or rejection by the company; or for other activities that are protected under Public Law 86-272, 15 U.S.C. 381-384 (hereafter P.L. 86-272) and this rule.

c) Neither the company nor the employee or representative shall maintain a telephone listing or other public listing for the company within the state, nor use advertising or business literature indicating that the company or its employee or representative can be contacted at a specific address within the state. However, the normal distribution and use of business cards and stationery identifying the employee's or representative's name, address, telephone, and fax numbers and affiliation with the company shall not, by itself, be considered as advertising or otherwise publicly attributing an office to the company or its employee or representative.

4. "Solicitation" means:

a) speech or conduct that explicitly or implicitly invites an order; and

b) activities that neither explicitly nor implicitly invite an order, but are entirely ancillary to requests for an order.

B. Every corporation doing business in Utah whether qualified or not, and every corporation incorporated or qualified in Utah whether or not doing business therein is subject to the Utah corporation franchise tax, unless exempted under the provisions of Section 59-7-102. If liability for the tax exists, the tax must be computed under the provisions of Section 59-7-104, at the rate provided by statute, but in no case shall the tax be less than the minimum tax prescribed.

C. Foreign corporations not qualified in Utah which ship goods to customers in this state from points outside this state, pursuant to orders solicited but not accepted by agents or employees in this state, and which are not doing business in Utah are not taxable under the Utah Corporation Franchise Tax Act if:

1. they maintain no office nor stocks of goods in Utah, and

2. they engage in no other activities in Utah.

D. Foreign corporations not qualified in Utah that make deliveries from stocks of goods located in this state are doing business in this state and are taxable under the Corporation Franchise Tax Act, even though they have no office or regular place of business in this state.

E. Foreign corporations not qualified in Utah are subject to the franchise tax if performing the necessary duties to fulfill contracts or subcontracts in Utah, whether through their own employees or by furnishing of supervisory personnel.

F. Corporations that own real property within this state and rent or lease such properties to others are subject to the franchise tax whether or not qualified under the laws of this state. This also applies to corporations deriving royalty, lease, or rental income from properties located within this state, whether or not such properties are owned by the corporation.

G. Foreign corporations not qualified in Utah are subject to the franchise or income tax if they derive income from revenue-producing properties located in Utah or moving through Utah or from services performed by personnel in this state. This includes, but is not limited to, freight and transportation operations, sales of real property having a Utah situs, leasing or sales of franchises, sporting or entertaining events, etc.

H. Corporations that participate in joint ventures or working and operating agreements which are performed in this state are subject to the franchise tax whether qualified or not.

I. Foreign corporations qualified in Utah are subject to the franchise tax even though engaged solely in interstate commerce.

J. P.L. 86-272 restricts a state from imposing a net income tax on income derived within its borders from interstate commerce if the only business activity of the company within the state consists of the solicitation of orders for sales of tangible personal property, which orders are sent outside the state for acceptance or rejection, and, if accepted, are filled by shipment or delivery from a point outside the state. The term "net income tax" includes a franchise tax measured by net income. If any sales of tangible personal property are made from Utah into a state which is precluded by P.L. 86-272 from taxing the income of the seller, such sales remain subject to throwback to Utah pursuant to Section 59-7-318(2). Similarly, a sale into Utah from another state would not subject a corporation to the Utah tax if the corporation's activities do not exceed those allowed under P.L. 86-272.

1. Only the solicitation to sell personal property is afforded immunity under P.L. 86-272; therefore, the leasing, renting licensing or other disposition of tangible personal property, or transactions involving intangibles such as franchises, patents, copyrights, trade marks, service marks and the like, or any other type of property are not protected activities under P. L. 86-272. The sale or delivery and the solicitation for the sale or delivery of any type of service that is not either (1) ancillary to solicitation, or (2) otherwise set forth as a protected activity below is also not protected under P.L. 86-272 or this rule.

2. For the in-state activity to be a protected activity under P.L. 86-272, it must be limited solely to solicitation, except for de minimis activities and activities conducted by independent contractors as described below.

K. The following in-state activities, assuming they are not of a de minimis level, will constitute doing business in Utah under P.L. 86-272 and will subject the corporation to the Utah corporation franchise tax:

1. making repairs or providing maintenance or service to the property sold or to be sold;

2. collecting current or delinquent accounts, whether directly or by third parties, through assignment or otherwise;

3. investigating credit worthiness;

4. installation or supervision of installation at or after shipment or delivery;

5. conducting training courses, seminars, or lectures for personnel other than personnel involved only in solicitation;

6. providing any kind of technical assistance or service including engineering assistance or design service, when one of the purposes thereof is other than the facilitation of the

solicitation of orders;

7. investigating, handling, or otherwise assisting in resolving customer complaints, other than mediating direct customer complaints when the sole purpose of such mediation is to ingratiate the sales personnel with the customer;

8. approving or accepting orders;

9. repossessing property;

10. securing deposits on sales;

11. picking up or replacing damaged or returned property;

12. hiring, training, or supervising personnel, other than personnel involved only in solicitation;

13. using agency stock checks or any other instrument or process by which sales are made within this state by sales personnel;

14. maintaining a sample or display room in excess of two weeks (14 days) at any one location within the state during the tax year;

15. carrying samples for sale, exchange or distribution in any manner for consideration or other value;

16. owning, leasing, using, or maintaining any of the following facilities or property in-state:

(a) repair shop;

(b) parts department;

(c) any kind of office other than an in-home office;

(d) warehouse;

(e) meeting place for directors, officers, or employees;

(f) stock of goods other than samples for sales personnel or that are used entirely ancillary to solicitation;

(g) telephone answering service that is publicly attributed to the company or to employees or agents of the company in their representative status;

(h) mobile stores, i.e., vehicles with drivers who are sales personnel making sales from the vehicles;

(i) real property or fixtures to real property of any kind.

17. consigning stocks of goods or other tangible personal property to any person, including an independent contractor, for sale;

18. maintaining, by either an in-state or an out-of-state resident employee, an office or place of business (in-home or otherwise) of any kind other than an in-home office;

(b) The maintenance of any office or other place of business in this state that does not strictly qualify as an in-home office under this subsection shall, by itself cause the loss of protection under this rule.

(c) For purposes of this subsection it is not relevant whether the company pays directly, indirectly, or not at all for the cost of maintaining the in-home office.

19. entering into franchising of licensing agreements; selling or otherwise disposing of franchises and licenses; or selling or otherwise transferring tangible personal property pursuant to such franchise or license by the franchisor or licensor to its franchisee or licensee within the state;

20. shipping or delivering of goods into this state by means of private vehicle, rail, water, air or other carrier, irrespective of whether a shipment of delivery fee or other charge is imposed, directly or indirectly, upon the purchaser;

21. conducting any activity not listed as a protected activity below which is not entirely ancillary to requests for orders, even if such activity helps to increase purchases.

L. The following in-state activities will not cause the loss of protection for otherwise protected sales;

1. soliciting orders for sales by any type of advertising;

2. soliciting of orders by an in-state resident employee or representative of the company, so long as such person does not maintain or use any office or other place of business in the state other than an in-home office;

3. carrying samples and promotional materials only for display or distribution without charge or other consideration;

4. furnishing and setting up display racks and advising customers on the display of the company's products without charge or other consideration;

5. providing automobiles to sales personnel for their use in conducting protected activities;

6. passing orders, inquiries and complaints on to the home office;

7. missionary sales activities, i.e. the solicitation of indirect customers for the company's goods. For example, a manufacturer's solicitation of retailers to buy the manufacturer's goods from the manufacturer's wholesale customers would be protected if such solicitation activities are otherwise immune;

8. coordinating shipment or delivery without payment or other consideration and providing information relating thereto either prior or subsequent to the placement of an order;

9. checking of customer's inventories without a charge therefore if performed for reorder, but not for other purposes such as a quality control;

10. maintaining a sample or display room for two weeks (14 days) or less at any one location within the state during the tax year;

11. recruiting, training or evaluating sales personnel, including occasionally using homes, hotels or similar places for meetings with sales personnel;

12. mediating direct customer complaints when the purpose thereof is solely for ingratiating the sales personnel with the customer and facilitating requests for orders;

13. owning, leasing, using or maintaining personal property for use in the employee or representative's in-home office or automobile that is solely limited to the conducting of protected activities. Therefore, the use of personal property such as a cellular telephone, facsimile machine, duplicating equipment, personal computer and computer software that is limited to the carrying on of protected solicitation and activity entirely ancillary to such solicitation or permitted by the provisions of this rule shall not, by itself, remove the protection of P.L. 86-272.

M. P.L. 86-272 provides protection to certain in-state activities if conducted by an independent contractor that would not be afforded if performed by the company or its employees or other representatives.

1. Independent contractors may engage in the following limited activities in the state without the company's loss of immunity;

a) soliciting sales;

b) making sales;

c) maintaining an office.

2. Sales representatives who represent a single principal are not considered to be independent contractors and are subject to the same limitations as those provided under P.L. 86-272 and

this rule.

3. Maintenance of stock of goods in the state by the independent contractor under consignment or any other type of arrangement with the company, except for purposes of display and solicitation, shall remove the protection.

N. The Tax Commission will apply the provisions of P.L. 86-272 and of this rule to business activities conducted in foreign commerce. Therefore, whether business activities are conducted by (i) a foreign or domestic company selling tangible personal property into a county outside of the United States from a point within this state or by (ii) either company selling such property into this state from a point outside of the United States, the principles under this rule apply equally to determine whether the sales transactions are protected and the company immune from taxation in either this state or in the foreign county, as the case might be, and whether, if applicable, the throwback provisions of Section 59-7-318(2) will apply.

O. The protection afforded by P.L. 86-272 and the provisions of this rule do not apply to any corporation that is incorporated or domiciled in this state.

P. A company that registers or otherwise formally qualifies to do business within this state does not, by that fact alone, lose its protection under P.L. 86-272. Where, separate from or ancillary to such registration or qualification, the company receives and seeks to use or protect any additional benefit or protection from this state through activity not otherwise protected under P.L. 86-272 or this rule, such protection shall be removed.

Q. The protection afforded under P.L. 86-272 and the provisions of this rule shall be determined on a year by year tax basis. Therefore, if at any time during a tax year the company conducts activities that are not protected under P.L. 86-272 or this rule, no sales in this state or income earned by the company attributed to this state during any part of said tax year shall be protected from taxation for purposes of the corporate franchise tax.

R865-6F-8. Allocation and Apportionment of Net Income (Uniform Division of Income for Tax Purposes Act) Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

A. Business and Nonbusiness Income Defined. Section 59-7-302 defines business income as income arising from transactions and activity in the regular course of the taxpayer's trade or business operations. In essence, all income that arises from the conduct of trade or business operations of a taxpayer is business income. For purposes of administration of the Uniform Division of Income for Tax Purposes Act (UDITPA), the income of the taxpayer is business income unless clearly classifiable as nonbusiness income.

1. Nonbusiness income means all income other than business income and shall be narrowly construed.

2. The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, and nonoperating income, is of no aid in determining whether income is business or nonbusiness income. Income of any type or class and from any source is business income if it arises from transactions and activity occurring in the regular course of a trade or business. Accordingly, the critical element in determining whether income is business income or nonbusiness income is the identification of the transactions and activity that are the elements of a particular trade or business. In general, all transactions and activities of the taxpayer that are dependent upon or contribute to the operation of the taxpayer's economic enterprise as a whole constitute the taxpayer's trade or business and will be transactions and activity arising in the regular course of business, and will constitute integral parts of a trade or business.

3. Business and Nonbusiness Income. Application of Definitions. The following are rules for determining whether particular income is business or nonbusiness income:

a) Rents from real and tangible personal property. Rental income from real and tangible property is business income if the property with respect to which the rental income was received is used in the taxpayer's trade or business or is incidental thereto and therefore is includable in the property factor under G.1.a).

b) Gains or Losses from Sales of Assets. Gain or loss from the sale, exchange or other disposition of real or tangible or intangible personal property constitutes business income if the property while owned by the taxpayer was used in the taxpayer's trade or business. However, if the property was utilized for the production of nonbusiness income the gain or loss will constitute nonbusiness income. See G.1.b).

c) Interest. Interest income is business income where the intangible with respect to which the interest was received arises out of or was created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the intangible is related to or incidental to trade or business operations.

d) Dividends. Dividends are business income where the stock with respect to which the dividends are received arises out of or was acquired in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the stock is related to or incidental to the trade or business operations. Because of the regularity with which most corporate taxpayers engage in investment activities, because the source of capital for those investments arises in the ordinary course of a taxpayer's business, because the income from those investments is utilized in the ordinary course of the taxpayer's business and because those investment assets are used for general credit purposes, income arising from the ownership or sale or other disposition of investments is presumptively business income. This presumption may be rebutted if the taxpayer can prove that the investment is unrelated to the regular trade or business activities.

e) Proration of Deductions. In most cases an allowable deduction of a taxpayer will be applicable only to the business income arising from the trade or business or to a particular item of nonbusiness income. In some cases an allowable deduction may be applicable to the business income and to nonbusiness income. In those cases the deduction shall be prorated among the business and nonbusiness income in a manner that fairly distributes the deduction among the classes of income to which it is applicable.

f) A schedule must be submitted with the return showing:

(1) the gross income from each class of income being allocated;

(2) the amount of each class of applicable expenses,

together with explanation or computations showing how amounts were arrived at;

(3) the total amount of the applicable expenses for each income class; and

(4) the net income of each income class. The schedules should provide appropriate columns as set forth above for items allocated to this state and for items allocated outside this state.

g) In filing returns with this state, if the taxpayer departs from or modifies the manner of prorating any such deduction used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

h) If the returns or reports filed by a taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the application or proration of any deduction, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

B. Definitions.

1. "Taxpayer," for purposes of this rule, is as defined in Section 59-7-101.

2. "Apportionment" means the division of business income between states by the use of a formula containing apportionment factors.

3. "Allocation" means the assignment of nonbusiness income to a particular state.

4. "Business activity" refers to the transactions and activity occurring in the regular course of the trade or business of a taxpayer.

C. Apportionment.

1. If the business activity with respect to the trade or business of a taxpayer occurs both within and without this state, and if by reason of that business activity the taxpayer is taxable in another state, the portion of the net income (or net loss) arising from the trade or business derived from sources within this state shall be determined by apportionment in accordance with Sections 59-7-311 to 59-7-319.

2. Allocation. Any taxpayer subject to the taxing jurisdiction of this state shall allocate all of its nonbusiness income or loss within or without this state in accordance with Sections 59-7-306 to 59-7-310.

D. Consistency and Uniformity in Reporting. In filing returns with this state, if the taxpayer departs from or modifies the manner in which income has been classified as business income or nonbusiness income in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by a taxpayer for all states to which the taxpayer reports under UDITPA are not uniform in the classification of income as business or nonbusiness income, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

E. Taxable in Another State.

1. In General. Under Section 59-7-303 the taxpayer is subject to the allocation and apportionment provisions of UDITPA if it has income from business activity that is taxable both within and without this state. A taxpayer's income from business activity is taxable without this state if the taxpayer, by reason of business activity (i.e., the transactions and activity occurring in the regular course of the trade or business), is taxable in another state within the meaning of Section 59-7-305. A taxpayer is taxable within another state if it meets either one of two tests:

a) if by reason of business activity in another state the taxpayer is subject to one of the types of taxes specified in Section 59-7-305(1), namely: a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

b) if by reason of business activity another state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether the state imposes that tax on the taxpayer. A taxpayer is not taxable in another state with respect to the trade or business merely because the taxpayer conducts activities in that state pertaining to the production of nonbusiness income.

2. When a Taxpayer Is Subject to a Tax Under Section 59-7-305. A taxpayer is subject to one of the taxes specified in Section 59-7-305(1) if it carries on business activity in a state and that state imposes such a tax thereon. Any taxpayer that asserts that it is subject to one of the taxes specified in Section 59-7-305(1) in another state shall furnish to the Tax Commission, upon its request, evidence to support that assertion. The Tax Commission may request that the evidence include proof that the taxpayer has filed the requisite tax return in the other state and has paid any taxes imposed under the law of the other state. The taxpayer's failure to produce that proof may be taken into account in determining whether the taxpayer is subject to one of the taxes specified in Section 59-7-305(1) in the other state. If the taxpayer voluntarily files and pays one or more taxes when not required to do so by the laws of that state or pays a minimal fee for qualification, organization, or for the privilege of doing business in that state, but

a) does not actually engage in business activity in that state, or

b) does actually engage in some business activity, not sufficient for nexus, and the minimum tax bears no relation to the taxpayer's business activity within that state, the taxpayer is not subject to one of the taxes specified within the meaning of Section 59-7-305(1).

3. When a State Has Jurisdiction to Subject a Taxpayer to a Net Income Tax. The second test, that of Section 59-7-305(2), applies if the taxpayer's business activity is sufficient to give the state jurisdiction to impose a net income tax by reason of business activity under the Constitution and statutes of the United States. Jurisdiction to tax is not present where the state is prohibited from imposing the tax by reason of the provisions of Public Law 86-272, 15 U. S. C. A. Sec. 381-385 (P.L. 86-272). In the case of any state as defined in Section 59-7-302(6), other than a state of the United States or political subdivision of a state, the determination of whether a state has jurisdiction to subject the taxpayer to a net income tax shall be made as though the jurisdictional standards applicable to a state of the United States applied in that state. If jurisdiction is otherwise present, the state is not considered as without jurisdiction by reason of the provisions of a treaty between that state and the United States.

F. Apportionment Formula. All business income of the taxpayer shall be apportioned to this state by use of the apportionment formula set forth in Section 59-7-311. The elements of the apportionment formula are the property factor,

see G. below, the payroll factor, see H. below, and the sales factor, see I. below, of the trade or business of the taxpayer. For exceptions see J. below.

G. Property Factor.

1. In General.

a) The property factor of the apportionment formula shall include all real and tangible personal property owned or rented by the taxpayer and used during the tax period in the regular course of its trade or business. Real and tangible personal property includes land, buildings, machinery, stocks of goods, equipment, and other real and tangible personal property but does not include coin or currency.

b) Property used in connection with the production of nonbusiness income shall be excluded from the property factor. Property used both in the regular course of the taxpayer's trade or business and in the production of nonbusiness income shall be included in the factor only to the extent the property is used in the regular course of the taxpayer's trade or business. The method of determining the portion of the value to be included in the factor will depend upon the facts of each case.

c) The property factor shall reflect the average value of property includable in the factor. Refer to G.6.

2. Property Used for the Production of Business Income. Property shall be included in the property factor if it is actually used or is available for or capable of being used during the tax period in the regular course of the trade or business of the taxpayer. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are includable in the factor. Property or equipment under construction during the tax period, except inventoriable goods in process, shall be excluded from the factor until the property is actually used in the regular course of the trade or business of the taxpayer. If the property is partially used in the regular course of the trade or business of the taxpayer while under construction, the value of the property to the extent used shall be included in the property factor.

3. Consistency in Reporting. In filing returns with this state, if the taxpayer departs from or modifies the manner of valuing property, or of excluding or including property in the property factor, used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the valuation of property and in the exclusion or inclusion of property in the property factor, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

4. Numerator. The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period in the regular course of the trade or business of the taxpayer. Property in transit between locations of the taxpayer to which it belongs shall be considered to be at the destination for purposes of the property factor. Property in transit between a buyer and seller that is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices shall be included in the numerator according to the state of destination. The value of mobile or movable property such as construction equipment, trucks, or leased electronic equipment that are located within and without this state during the tax period shall be determined for purposes of the numerator of the factor on the basis of total time within the state during the tax period. An automobile assigned to a traveling employee shall be included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed.

5. Valuation of Owned Property.

a) Property owned by the taxpayer shall be valued at its original cost. As a general rule original cost is deemed to be the basis of the property for state franchise or income tax purposes (prior to any adjustments) at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reasons including sale, exchange, and abandonment. However, capitalized intangible drilling and development costs shall be included in the property factor whether or not they have been expensed for either federal or state tax purposes.

b) Inventory of stock of goods shall be included in the factor in accordance with the valuation method used for state tax purposes.

c) Property acquired by gift or inheritance shall be included in the factor at its basis for determining depreciation.

6. Valuation of Rented Property.

a) Property rented by the taxpayer is valued at eight times its net annual rental rate. The net annual rental rate for any item of rented property is the annual rental rate paid by the taxpayer for the property, less the aggregate annual subrental rates paid by subtenants of the taxpayer. See J.2. for special rules where the use of the net annual rental rate produces a negative or clearly inaccurate value or where property is used by the taxpayer at no charge or rented at a nominal rental rate.

b) Subrents are not deducted when the subrents constitute business income because the property that produces the subrents is used in the regular course of the trade or business of the taxpayer when it is producing the income. Accordingly there is no reduction in its value.

c) Annual rental rate is the amount paid as rental for property for a 12-month period; i.e., the amount of the annual rent. Where property is rented for less than a 12-month period, the rent paid for the actual period of rental shall constitute the annual rental rate for the tax period. However, where a taxpayer has rented property for a term of 12 or more months and the current tax period covers a period of less than 12 months (due, for example, to a reorganization or change of accounting period), the rent paid for the short tax period shall be annualized. If the rental term is for less than 12 months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month to month basis.

d) Annual rent is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes:

(1) Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or

otherwise.

(2) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items that are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, and janitor services. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and other items.

e) Annual rent does not include:

(1) incidental day-to-day expenses such as hotel or motel accommodations, or daily rental of automobiles;

(2) royalties based on extraction of natural resources, whether represented by delivery or purchase. For this purpose, a royalty includes any consideration conveyed or credited to a holder of an interest in property that constitutes a sharing of current or future production of natural resources from that property, irrespective of the method of payment or how that consideration may be characterized, whether as a royalty, advance royalty, rental, or otherwise.

f) Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Hence, the original cost of leasehold improvements shall be included in the factor.

7. Averaging Property Values. As a general rule, the average value of property owned by the taxpayer shall be determined by averaging the values at the beginning and end of the tax period. However, the Tax Commission may require or allow averaging by monthly values if that method of averaging is required to properly reflect the average value of the taxpayer's property for the tax period.

a) Averaging by monthly values will generally be applied if substantial fluctuations in the values of the property exist during the tax period or where property is acquired after the beginning of the tax period or disposed of before the end of the tax period.

b) Example: The monthly value of the taxpayer's property was as follows:

TABLE

January	$ 2,000
February	2,000
March	3,000
April	3,500
May	4,500
June	10,000
July	15,000
August	17,000
September	23,000
October	25,000
November	13,000
December	2,000
Total	$120,000

The average value of the taxpayer's property includable in the property factor for the income year is determined as follows:

$120,000 / 12 = $10,000

c) Averaging with respect to rented property is achieved automatically by the method of determining the net annual rental rate of the property as set forth in G.6.a).

H. Payroll Factor.

1. The payroll factor of the apportionment formula shall include the total amount paid by the taxpayer in the regular course of its trade or business for compensation during the tax period.

2. The total amount paid to employees is determined upon the basis of the taxpayer's accounting method. If the taxpayer has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid. Notwithstanding the taxpayer's method of accounting, at the election of the taxpayer, compensation paid to employees may be included in the payroll factor by use of the cash method if the taxpayer is required to report compensation under that method for unemployment compensation purposes. The compensation of any employee on account of activities that are connected with the production of nonbusiness income shall be excluded from the factor.

3. The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services.

a) The term "employee" means:

(1) any officer of a corporation; or

(2) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee. Generally, a person will be considered to be an employee if he is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act. However, since certain individuals are included within the term employees in the Federal Insurance Contributions Act who would not be employees under the usual common law rules, it may be established that a person who is included as an employee for purposes of the Federal Insurance Contributions Act is not an employee for purposes of this rule.

b) In filing returns with this state, if the taxpayer departs from or modifies the treatment of compensation paid used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(1) If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the treatment of compensation paid, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

4. Denominator. The denominator of the payroll factor is the total compensation paid everywhere during the tax period. Accordingly, compensation paid to employees whose services are performed entirely in a state where the taxpayer is immune from taxation, for example, by P.L. 86-272, are included in the denominator of the payroll factor.

5. Numerator. The numerator of the payroll factor is the total amount paid in this state during the tax period by the taxpayer for compensation. The tests in Section 59-7-316 to be applied in determining whether compensation is paid in this state are derived from the Model Unemployment Compensation

Act. Accordingly, if compensation paid to employees is included in the payroll factor by use of the cash method of accounting or if the taxpayer is required to report compensation under that method for unemployment compensation purposes, it shall be presumed that the total wages reported by the taxpayer to this state for unemployment compensation purposes constitute compensation paid in this state except for compensation excluded under H. The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to this state for unemployment compensation purposes.

6. Compensation Paid in this State. Compensation is paid in this state if any one of the following tests applied consecutively are met:

a) The employee's service is performed entirely within the state.

b) The employee's service is performed entirely within and without the state, but the service performed without the state is incidental to the employee's service within the state. The word incidental means any service that is temporary or transitory in nature, or that is rendered in connection with an isolated transaction.

c) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

(1) if the employee's base of operations is in this state; or

(2) if there is no base of operations in any state in which some part of the service is performed, but the place from which the service is directed or controlled is in this state; or

(3) if the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the employee's residence is in this state.

d) The term "base of operations" is the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the taxpayer or communications from his customers or other persons or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of his trade or profession at some other point or points. The term "place from which the service is directed or controlled" means the place from which the power to direct or control is exercised by the taxpayer.

I. Sales Factor. In General.

1. Section 59-7-302(5) defines the term "sales" to mean all gross receipts of the taxpayer not allocated under Section 59-7-306 through 59-7-310. Thus, for purposes of the sales factor of the apportionment formula for the trade or business of the taxpayer, the term sales means all gross receipts derived by the taxpayer from transactions and activity in the regular course of the trade or business. The following are rules determining sales in various situations.

a) In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, sales includes all gross receipts from the sales of goods or products (or other property of a kind that would properly be included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales, less returns and allowances and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to sales. Federal and state excise taxes (including sales taxes) shall be included as part of receipts if taxes are passed on to the buyer or included as part of the selling price of the product.

b) In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, sales includes the entire reimbursed cost, plus the fee.

c) In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency, or the performance of equipment service contracts, or research and development contracts, sales includes the gross receipts from the performance of services including fees, commissions, and similar items.

d) In the case of a taxpayer engaged in renting real or tangible property, sales includes the gross receipts from the rental, lease or licensing of the use of the property.

e) In the case of a taxpayer engaged in the sale, assignment, or licensing of intangible personal property such as patents and copyrights, sales includes the gross receipts therefrom.

f) If a taxpayer derives receipts from the sale of equipment used in its business, those receipts constitute sales. For example, a truck express company owns a fleet of trucks and sells its trucks under a regular replacement program. The gross receipts from the sales of the trucks are included in the sales factor.

g) In some cases certain gross receipts should be disregarded in determining the sales factor in order that the apportionment formula will operate fairly to apportion to this state the income of the taxpayer's trade or business. See J.3.

h) In filing returns with this state, if the taxpayer departs from or modifies the basis for excluding or including gross receipts in the sales factor used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

i) If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the inclusion or exclusion of gross receipts, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

2. Denominator. The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded under J.3.

3. Numerator. The numerator of the sales factor shall include gross receipts attributable to this state and derived by the taxpayer from transactions and activity in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential charges incidental to gross receipts shall be included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.

4. Sales of Tangible Personal Property in this State.

a) Gross receipts from the sales of tangible personal property (except sales to the United States government; see I.5.) are in this state:

(1) if the property is delivered or shipped to a purchaser

within this state regardless of the f.o.b. point or other conditions of sale; or

(2) if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the taxpayer is not taxable in the state of the purchaser.

b) Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.

c) Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

d) The term "purchaser within this state" shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state.

e) When property being shipped by a seller from the state of origin to a consignee in another state is diverted while en route to a purchaser in this state, the sales are in this state.

f) If the taxpayer is not taxable in the state of the purchaser, the sale is attributed to this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state.

g) If a taxpayer whose salesman operates from an office located in this state makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped directly by a third party to the purchaser, the following rules apply:

(1) If the taxpayer is taxable in the state from which the third party ships the property, then the sale is in that state.

(2) If the taxpayer is not taxable in the state from which the property is shipped, the sale is in this state.

5. Sales of Tangible Personal Property to United States Government in this state.

a) Gross receipts from the sales of tangible personal property to the United States government are in this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state. For purposes of this rule, only sales for which the United States government makes direct payment to the seller pursuant to the terms of a contract constitute sales to the United States government. Thus, as a general rule, sales by a subcontractor to the prime contractor, the party to the contract with the United States government, do not constitute sales to the United States government.

6. Sales Other than Sales of Tangible Personal Property in this State.

a) In general, Section 59-7-319(1) provides for the inclusion in the numerator of the sales factor of gross receipts from transactions other than sales of tangible personal property (including transactions with the United States government). Under Section 59-7-319(1), gross receipts are attributed to this state if the income producing activity that gave rise to the receipts is performed wholly within this state. Also, gross receipts are attributed to this state if, with respect to a particular item of income, the income producing activity is performed within and without this state but the greater proportion of the income producing activity is performed in this state, based on costs of performance.

b) The term "income producing activity" applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gains or profit. Income producing activity does not include transactions and activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. Accordingly, the income producing activity includes the following:

(1) the rendering of personal services by employees or the utilization of tangible and intangible property by the taxpayer in performing a service;

(2) the sale, rental, leasing, or licensing or other use of real property;

(3) the rental, leasing, licensing or other use of intangible personal property; or

(4) the sale, licensing or other use of intangible personal property. The mere holding of intangible personal property is not, of itself, an income producing activity.

c) The term "costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

d) Receipts (other than from sales of tangible personal property) in respect to a particular income producing activity are in this state if:

(1) the income producing activity is performed wholly within this state; or

(2) the income producing activity is performed both in and outside this state and a greater proportion of the income producing activity is performed in this state than in any other state, based on costs of performance.

e) The following are special rules for determining when receipts from the income producing activities described below are in this state:

(1) Gross receipts from the sale, lease, rental or licensing of real property are in this state if the real property is located in this state.

(2) Gross receipts from the rental, lease, or licensing of tangible personal property are in this state if the property is located in this state. The rental, lease, licensing or other use of tangible personal property in this state is a separate income producing activity from the rental, lease, licensing or other use of the same property while located in another state. Consequently, if the property is within and without this state during the rental, lease or licensing period, gross receipts attributable to this state shall be measured by the ratio that the time the property was physically present or was used in this state bears to the total time or use of the property everywhere during the period.

(3) Gross receipts for the performance of personal services are attributable to this state to the extent services are performed in this state. If services relating to a single item of income are performed partly within and partly without this state, the gross receipts for the performance of services shall be attributable to this state only if a greater portion of the services were performed in this state, based on costs of performance. Usually where services are performed partly within and partly without this state, the services performed in each state will constitute a separate income producing activity. In that case, the gross

receipts for the performance of services attributable to this state shall be measured by the ratio that the time spent in performing services in this state bears to the total time spent in performing services everywhere. Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation that gives rise to gross receipts. Personal service not directly connected with the performance of the contract or other obligations, as for example, time expended in negotiating the contract, is excluded from the computations.

J. Special Rules:

1. Section 59-7-320 provides that if the allocation and apportionment provisions of UDITPA do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for, or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

a) separate accounting;

b) the exclusion of any one or more of the factors;

c) the inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in this state; or

d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

2. Property Factor.

The following special rules are established in respect to the property factor of the apportionment formula:

a) If the subrents taken into account in determining the net annual rental rate under G.6.b) produce a negative or clearly inaccurate value for any item of property, another method that will properly reflect the value of rented property may be required by the Tax Commission or requested by the taxpayer. In no case however, shall the value be less than an amount that bears the same ratio to the annual rental rate paid by the taxpayer for property as the fair market value of that portion of property used by the taxpayer bears to the total fair market value of the rented property.

b) If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a nominal rate, the net annual rental rate for the property shall be determined on the basis of a reasonable market rental rate for that property.

3. Sales Factors.

The following special rules are established in respect to the sales factor of the apportionment formula:

a) Where substantial amounts of gross receipts arise from an incidental or occasional sale of a fixed asset used in the regular course of the taxpayer's trade or business, those gross receipts shall be excluded from the sales factor. For example, gross receipts from the sale of a factory or plant will be excluded.

b) Insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless exclusion would materially affect the amount of income apportioned to this state. For example, the taxpayer ordinarily may include or exclude from the sales factor gross receipts from such transactions as the sale of office furniture, and business automobiles.

c) Where the income producing activity in respect to business income from intangible personal property can be readily identified, that income is included in the denominator of the sales factor and, if the income producing activity occurs in this state, in the numerator of the sales factor as well. For example, usually the income producing activity can be readily identified in respect to interest income received on deferred payments on sales of tangible property, see I.1.a), and income from the sale, licensing or other use of intangible personal property, see I.6.b)(4).

(1) Where business income from intangible property cannot readily be attributed to any particular income producing activity of the taxpayer, the income cannot be assigned to the numerator of the sales factor for any state and shall be excluded from the denominator of the sales factor. For example, where business income in the form of dividends received on stock, royalties received on patents or copyrights, or interest received on bonds, debentures or government securities results from the mere holding of the intangible personal property by the taxpayer, such dividends and interest shall be excluded from the denominator of the sales factor.

(2) Exclude from the denominator of the sales factor, receipts from the sales of securities unless the taxpayer is a dealer therein.

4. Domestic International Sales Corporation (DISC). In any case in which a corporation, subject to the income tax jurisdiction of Utah, owns 50 percent or more of the voting power of the stock of a corporation classified as a DISC under the provisions of Sec. 992 Internal Revenue Code, a combined filing with the DISC corporation is required.

5. Partnership or Joint Venture Income. Income or loss from partnership or joint venture interests shall be included in income and apportioned to Utah through application of the three-factor formula consisting of property, payroll and sales. For apportionment purposes, the portion of partnership or joint venture property, payroll and sales to be included in the corporation's property, payroll and sales factors shall be computed on the basis of the corporation's ownership interest in the partnership or joint venture, and otherwise in accordance with other applicable provisions of this rule.

R865-6F-14. Extent to Which Federal Income Tax Provisions Are Followed for Corporation Franchise Tax Purposes Pursuant to Utah Code Ann. Sections 59-7-106, 59-7-108, 59-7-501, and 59-7-502.

A. It is the policy of the Tax Commission, in matters involving the determination of net income for Utah corporation franchise tax purposes, to follow as closely as possible federal requirements with respect to the same matters. In some instances, of course, the federal and state statutes differ; and due to such conflict, the federal rulings, regulations, and decisions cannot be followed. Furthermore, in some instances, the Tax Commission may disagree with the federal determinations and does not consider them controlling for Utah corporation franchise tax purposes.

1. The items of major importance ordinarily allowed in conformity with federal requirements are:

a. depreciation (see rule R865-6F-9),

b. depletion,

c. exploration and development expenses,

d. intangible drilling costs,

e. accounting methods and periods (see rule R865-6F-2), and

f. Subpart F income.

2. The following are the major items which require different treatment under the state and federal statutes:

a. installment sales (see rule R865-6F-15),

b. consolidated returns (see rule R865-6F-4),

c. liquidating dividends,

d. municipal bond interest,

e. capital loss deduction,

f. loss carry-overs and carry-backs, and

g. gross-up on foreign dividends.

Note: The only reserves permitted in determining net-income for Utah corporation franchise tax purposes are depreciation, depletion, and bad debts.

R865-6F-15. Installment Basis of Reporting Income in Year of Termination Pursuant to Utah Code Ann. Section 59-7-112.

A. The Corporation Franchise Tax Act allows a corporation, under certain conditions and under rules prescribed by the Tax Commission, to report income arising from the sale or other disposition of property on a deferred or so-called installment basis. Thus, a gain technically realized at the time the sale is made may, at the election of the taxpayer, be reported on a deferred basis in accordance with the law and the following sections of this rule. The rule allowing deferment of reporting such income is only one of postponement of the tax, and not one of exemption from a tax otherwise lawfully due. Thus, the privilege of deferment is terminated if the taxpayer ceases to be subject to tax prior to the reporting of the entire amount of installment income. When a taxpayer elects to report income arising from the sale or other disposition of property as provided in Section 59-7-112, and the entire income therefrom has not been reported prior to the year that the taxpayer ceases to be subject to the tax imposed under the Utah Corporation Income and Franchise Tax Acts, the unreported income is included in the return for the last year in which the taxpayer is subject to the tax. This rule applies to all corporations which elect to report on the installment basis. If a corporation on this basis desires to dissolve or to withdraw, it must comply with the provisions hereof prior to issuance of the tax clearance certificate.

B. Income reported under the provisions of Section 59-7-112 and this rule shall be subject to the same treatment in the allocation of income; i.e., specific allocation or apportionment, as would have been accorded the original income from the sale under the provisions of the Uniform Division of Income for Tax Purposes Act. In case such income is subject to apportionment, the apportionment fraction for the year in which the income is reported applies rather than the year in which the sale was made.

R865-6F-16. Apportionment of Income of Long-Term Construction Contractors Pursuant to Utah Code Ann. Sections 59-7-302 through 321, and 59-7-501.

A. When a taxpayer elects to use the percentage-of-completion method of accounting, or the completed contract method of accounting for long-term contracts, and has income from sources both within and without this state, the amount of business income derived from such long- term contracts from sources within this state is determined pursuant to this rule.

B. Business income is apportioned to this state by a three-factor formula consisting of property, payroll, and sales--regardless of the method of accounting for long-term contracts elected by the taxpayer. The total of the property, payroll, and sales percentages is divided by three to determine the apportionment percentage. The apportionment percentage is then applied to business income to determine the amount apportioned to this state.

1. Percentage-of-completion method. Under this method of accounting for long-term contracts, the amount included each year as business income from each contract is the amount by which the gross contract price (which corresponds to the percentage of the entire contract completed during the income years) exceeds all expenditures made during the income year in connection with the contract. Beginning and ending material and supplies inventories must be appropriately accounted for in reporting expenditures.

2. Completed-contract method. Under this method of accounting, business income derived from long-term contracts is reported for the income year in which the contract is completed. A special computation is required to compute the amount of business income attributable to this state from each completed contract. All receipts and expenditures applicable to the contracts, whether complete or incomplete at the end of the income year, are excluded from other business income, which are apportioned by the regular three-factor formula of property, payroll, and sales.

C. Property factor. In general, the numerator and denominator of the property factor is determined as set forth in Utah Code Ann. Sections 59-7-312, 59-7-313, and 59-7-314 and the rules thereunder. However, the following special rules are also applicable:

1. The average value of the taxpayer's cost (including materials and labor) of construction in progress, to the extent these costs exceed progress billings, are included in the denominator of the property factor. The value of those construction costs attributable to construction projects in this state are included in the numerator of the property factor. It may be necessary to use monthly averages if yearly averages do not properly reflect the average value of the taxpayer's equity.

2. Rent paid for the use of equipment directly attributable to a particular construction project is included in the property factor at eight times the net annual rental rate, even though the rental expense may be capitalized into the cost of construction.

3. The property factor is computed in the same manner for all long-term-contract methods of accounting and is computed for each income year, even though under the completed-contract method of accounting business income is computed separately.

D. Payroll factor. In general, the numerator and denominator of the payroll factor are determined as set forth in Utah Code Ann. Sections 59-7-315 and 59-7-316 and the rules thereunder. However, the following special rules are also applicable.

1. Compensation paid to employees attributable to a particular construction project is included in the payroll factor even though capitalized into the cost of construction.

2. Compensation paid to employees who, in the aggregate, perform most of their services in a state to which their employer does not report them for unemployment tax purposes, is attributed to the state where the services are performed. For

example, a taxpayer engaged in a long-term contract in State X sends several key employees to that state to supervise the project. The taxpayer, for unemployment tax purposes reports these employees to State Y where the main office is maintained and where the employees reside. For payroll factor purposes and in accordance with Utah Code Ann. Section 59-7-316 and the rule thereunder, the compensation is assigned to the numerator of State X.

3. The payroll factor is computed in the same manner for all long-term-contract methods of accounting and is computed for each income year, even though under the completed contract method of accounting, business income is computed separately.

E. Sales Factor. In general, the numerator and denominator of the sales factor shall be determined as set forth in Utah Code Ann. Sections 59-7-317, 59-7-318, and 59-7-319 and the rules thereunder. However, the following special rules are also applicable.

1. Gross receipts derived from the performance of a contract are attributable to this state if the construction project is located in this state. If the construction project is located partly within and partly without this state, the gross receipts attributable to this state are based upon the ratio which construction costs for the project in this state incurred during the coming year bears to the total of such construction costs for the entire project during the income year. Progress billings are ordinarily used to reflect gross receipts and must be shown in both the numerator and denominator of the sales factor.

2. If the percentage-of-completion method is used, the sales factor includes only that portion of the gross contract price which corresponds to the percentage of the entire contract which was completed during the income year. For example, a construction contractor which had elected the percentage-of-completion method of accounting entered into a $9,000,000 long-term construction contract. At the end of its current income year (the second since starting the project) it estimated that the project was 30 percent completed. The amount of gross receipts included in the sales factor for the current income year is $2,700,000 (30 percent of $9,000,000), regardless of whether the taxpayer uses the accrual method or the cash method of accounting for receipts and disbursements.

3. If the completed-contract method of accounting is used, the sales factor includes the portion of the gross receipts (progress billings) received under the cash basis or accrued, whichever is applicable, during the income year attributable to each contract. For example, a construction contractor which elected the completed-contract method of accounting entered into a long-term construction contract. At the end of its current income year (the second since starting the project) it had billed, and accrued on its books a total of $5,000,000 of which $2,000,000 had accrued in the first year the contract was undertaken, and $3,000,000 in the current (second) year. The amount of gross receipts included in the sales factor for the current income year is $3,000,000. If the taxpayer keeps its books on the cash basis, and as of the end of its current income year has received only $2,500,000 of the $3,000,000 billed during the current year, the amount of gross receipts to be included in the sales factor for the current year is $2,500,000.

4. The sales factor, except as noted above in subparagraphs 2. and 3., is computed in the same manner for all long-term contract methods of accounting and is computed for each income year--even though under the completed-contract method of accounting, business income is computed separately.

F. The total of the property, payroll, and sales percentages is divided by three to determine the apportionment percentage which is then applied to business income to establish the amount apportioned to this state.

G. The completed-contract method of accounting provides that the reporting of income (or loss) is deferred until the year the construction project is completed. In order to determine the amount of income which is attributable to sources within this state, a separate computation is made for each contract completed during the income year, regardless of whether the project is located within or without this state. The amount of income from each contract completed during the income year apportioned to this state is added to other business income apportioned to this state by the regular three-factor formula, and that total together with all nonbusiness income allocated to this state becomes the measure of tax for the income year. The amount of income (or loss) from each contract which is derived from sources within this state using the completed-contract method of accounting is computed as follows.

1. In the income year the contract is completed, the income (or loss) therefrom is determined.

2. The income (or loss) determined at Paragraph G.1. is apportioned to this state by the following method:

(a) a fraction is determined for each year the contract was in progress (the numerator of which is the amount of construction costs paid or accrued each year the contract was in progress, and the denominator of which is the total of all construction costs for the project);

(b) each percentage determined in (a) is multiplied by the apportionment formula percentage for that particular year;

(c) these factors are totaled; and

(d) the total income is multiplied by this combined percentage, and the resulting income (or loss) is the amount of contract business income assigned to this state.

3. A corporation using the completed-contract method of accounting is required to include income derived from sources within this state from contracts within or without this state or income from incomplete contracts in progress outside this state in the year of withdrawal, dissolution, or cessation of business pursuant to Paragraph G.4.

4. The amount of income (or loss) from each such contract apportioned to this state is determined as if the percentage-of-completion method of accounting were used for all such contracts on the date of withdrawal, dissolution, or cessation of business. The amount of business income (or loss) for each such contract is the amount by which the gross contract price from each such contract from the commencement thereof to the date of withdrawal, dissolution, or cessation of business exceeds all expenditures made during such period in connection with each such contract. Beginning and ending material and supplies inventories must be appropriately accounted for in reporting expenditures in connection with each contract.

R865-6F-18. Corporations Exempt From The Franchise Tax Pursuant to Utah Code Ann. Section 59-7-105.

A. Corporations incorporated or qualified in Utah under

the Nonprofit Corporation Act are taxable unless a valid Utah corporation franchise exemption is obtained. A corporation must be engaged in or organized to engage in one of the exempt categories provided in the Utah law in order to be eligible for exemption from Utah corporation franchise tax. In some instances, Utah exempt provisions are the same as those contained in federal law. Corporations that obtain a valid Utah exempt ruling are not required to file Utah corporation franchise tax returns (Form TC-20) nor pay Utah corporation franchise taxes, except as noted in Paragraph B, of this rule.

B. Corporations which meet the requirements of Section 501(c), as amended, of the Internal Revenue Code are exempt from the franchise tax. However, if an exempt corporation becomes subject to federal income tax, it must make a full disclosure of the items and amounts which have become subject to federal tax for a redetermination of its taxable status for Utah corporation franchise tax purposes.

1. The federal exempt ruling is used as the basis for determining Utah exemption, provided a copy of the ruling is submitted with a written request for Utah corporation franchise tax exemption.

2. The Tax Commission replies in writing to the written request.

C. If Utah law provides for exemption but federal law does not, the Tax Commission makes an exception upon receipt of a written request from corporations such as:

1. Homeowner associations not organized for profit, which are organized to maintain or operate common areas or facilities. (Corporations such as time share, recreation property, and business property associations formed to maintain common areas are not exempt.)

2. Holding companies are generally exempt from Corporation Franchise Tax under the provisions of Utah Code Ann. Section 59-7-105(c). However, several conditions must be met before the exemption applies. These conditions are as follows.

(a) Each of its subsidiary corporations required by Utah Code Ann. Section 59-7-102 to pay tax for the privilege of exercising its corporate franchise or for the privilege of doing business in the state must make the returns required by Utah Code Ann. Title 59, Chapter 7. For purposes of the foregoing, a corporation is a subsidiary of a second corporation if such second corporation owns, either directly or indirectly, more than 50 percent of the outstanding stock of any class of stock of the subsidiary and is entitled to vote in the election of directors of the subsidiary.

(b) The activities of such corporation are limited so as to be only such as are incidental to the business of holding stock of other corporations for the purpose of controlling the management of affairs of such other corporations (the controlled corporation being referred to herein as subsidiary corporation). By way of illustration and not limitation, such activities may include the following:

(1) acquiring and holding shares, stocks, debentures, debenture stock, bonds, obligations, and securities issued by its subsidiary corporations;

(2) acquiring and holding stock and securities of another corporation for the purpose of acquiring control of such other corporation;

(3) charging its subsidiary corporations management fees for furnishing management, accounting, and other services;

(4) borrowing from and lending money to its subsidiary corporations, endorsing or otherwise guaranteeing obligations of its subsidiary corporations, and guaranteeing contractual or other performance obligations of its subsidiary corporations;

(5) having interlocking directors and officers between such corporation and its subsidiary corporations;

(6) monitoring and supervising the plans, methods, and operations of its subsidiary corporations;

(7) retaining and temporarily investing funds held for purposes incident to the management of affairs of its subsidiary corporations; provided, however, that such investments are handled in a manner so that any net income derived from investment of such funds is allocated so as to be included for purposes of the Utah corporation franchise tax in the income of the subsidiary corporations;

(8) the holding company may for its own use enter agreements concerning constructing, leasing, purchasing, holding, mortgaging or otherwise encumbering, and selling such real property as may be necessary or appropriate to the management of affairs of its subsidiary corporations; and

(9) employing persons and owning, leasing, or otherwise holding such personal property as may be necessary or appropriate to the management of affairs of its subsidiary corporations.

(c) The articles of association or incorporation of such corporation must limit the exercise of the corporation's franchise to those activities permitted under Paragraph C.2.b. of this rule.

(d) Unless permitted under Paragraph C.2 of this rule, any holding company claiming to be exempt from the Utah corporation franchise tax shall not carry on or undertake any business, undertakings, transactions, or operation commonly carried on or undertaken by capitalists, promoters, financiers, contractors, merchants, commercial men, or agents; nor carry on or undertake any investment or insurance business, or any business of any kind.

(e) The exemption applies only during that portion of a corporation's taxable year when these conditions are met. During any portion of its taxable year when a corporation does not meet all of the requirements, the corporation is subject to the tax imposed by Utah Code Ann. Section 59-7-102 based on such corporation's net income during the nonexempt portion of its taxable year. If a corporation, exempt for all or a portion of a taxable year, loses its exemption for such year, it may again be exempt by remedying the defect or defects and once again complying with all of the conditions and requirements. However, the exemption thus reestablished does not apply until the first day of the corporation's taxable year following the reestablishment of the exemption.

(f) Proof of Exemption. In order to establish its exemption under Paragraph C, each corporation claiming exemption must file with the Tax Commission:

(1) an affidavit showing the character of the corporation, the purpose for which it is organized, the nature of its activities, all of its subsidiary corporations and its subsidiary corporations which are subject to the Utah corporate franchise tax; and

(2) a copy of its article of association or incorporation.

(i) The foregoing filing must be made by what would

otherwise be the due date of the corporation's franchise tax return for the first year for which exemption is claimed. When a corporation has established its right to exemption, it need not thereafter voluntarily make a return or any further showing with respect to its status unless it changes the character of its organization or operations from the purpose for which it is organized, or unless the Tax Commission requests the filing of returns or the furnishing of other information. Copies of supplemental or amended articles of association or incorporation should be forwarded promptly to the Tax Commission for study as to the effect upon exemption. The Tax Commission may, from time to time, require the corporation to file an affidavit, or a form which will reveal the corporation's current status.

(g) This rule is not intended to in any way limit the authority and power of the Tax Commission (pursuant to Utah Code Ann. Section 59-7-113) to distribute, apportion, or allocate gross income or deductions between or among the corporations specified in Utah Code Ann. Section 59-7-113, if the Tax Commission determines that such distribution, apportionment or allocation is necessary in order to prevent evasion of Utah corporate franchise taxes or to clearly reflect the Utah taxable income of any of such corporations. If the Tax Commission determines, as part of its exercise of the foregoing power, that the deduction for an intercompany transfer is unreasonable in nature or amount, the Tax Commission may deny a deduction for the unreasonable portion in order to prevent evasion of Utah corporate franchise taxes or clearly reflect the Utah taxable income of the transfer corporation. Furthermore, this rule in no way prohibits the Tax Commission from determining if a holding company is conducting a unitary business with any or all of its subsidiaries for the purpose of determining the amount of net income attributable to Utah from the entire unitary business operations. Exercise by the Tax Commission of its authority and power contained in this paragraph is not evidence that the corporation has failed to meet all of the requirements of this section.

3. Insurance companies which are required to pay Utah insurance premium taxes are exempt from corporation franchise tax requirements. Insurance companies that are exempt from payment of Utah insurance premium taxes or who have qualified as a Utah Corporation, but have not commenced doing business in Utah, are subject to the corporation franchise tax requirements including the minimum tax provisions.

R865-6F-19. Taxation of Trucking Companies Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

A. Definitions:

1. "Average value" of property means the amount determined by averaging the values of real and personal property at the beginning and end of the income tax year. The Tax Commission may require the averaging of monthly values during the income year or other averaging as necessary to reflect properly the average value of the trucking company's property.

2. "Business and nonbusiness income" are as defined in R865- 6F-8(A).

3. "Mobile property" means all motor vehicles, including trailers, engaged directly in the movement of tangible personal property.

4. "Mobile property mile" means the movement of a unit of mobile property a distance of one mile, whether loaded or unloaded.

5. "Original cost" means the basis of the property for federal income tax purposes (prior to any federal income tax adjustments, except for subsequent capital additions, improvements thereto, or partial dispositions); or if the property has no such basis, or if the valuation of the property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer.

6. "Property used during the course of the income year" means property that is available for use in the taxpayer's trade or business during the income year.

7. "Trucking company" means a corportion engaged in or transacting the business of transporting freight, merchandise, or other property for hire.

8. "Value of owned real and tangible personal property" means the original cost of owned real and tangible personal property.

9. "Value of rented real and tangible personal property" means the product of eight times the net annual rental rate of rented real and tangible personal property.

B. When a trucking company has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the trucking company's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income apportioned to this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

C. In general, the property factor shall be determined in accordance with R865-6F-8(7), the payroll factor in accordance with R865-6F-8(H), and the sales factor in accordance with R865-6F-8(I), except as modified by this rule.

D. The denominator of the property factor shall be the average value of the total of the taxpayer's real and tangible personal property owned or rented and used within and without this state during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used, or available for use, within this state during the income year.

1. In the determination of the numerator of the property factor, all property, except mobile property, shall be included in the numerator of the property factor.

2. Mobile property located within and without this state during the income year shall be included in the numerator of the property factor in the ratio that the mobile property's miles within this state bear to the total miles of mobile property within and without this state.

E. The denominator of the payroll factor is the compensation paid within and without this state by the taxpayer during the income year for the production of business income. The numerator of the payroll factor is the compensation paid

within this state during the income year by the taxpayer for the production of business income.

1. With respect to all personnel, except those performing services within and without this state, compensation shall be included in the numerator as provided in R865-6F-8(H).

2. With respect to personnel performing services within and without this state, compensation shall be included in the numerator of the payroll factor in the ratio that their services performed within this state bear to their services performed within and without this state.

F. In general, all revenue derived from transactions and activities in the regular course of the taxpayer's trade or business that produce business income shall be included in the denominator of the revenue factor. The numerator of the revenue factor is the total revenue of the taxpayer in this state during the income year.

1. The total state revenue of the taxpayer, other than revenue from hauling freight, mail, and express, shall be attributable to this state in accordance with R865-6F-8(I).

2. The total revenue of the taxpayer attributable to this state during the income year from hauling freight, mail, and express shall be:

a) Intrastate: all receipts from any shipment that both originates and terminates within this state; and

b) Interstate: that portion of the receipts from movements or shipments passing through, into, or out of this state as determined by the ratio that the mobile property miles traveled by the movements or shipments within this state bear to the total mobile property miles traveled by the movements or shipments within and without this state.

G. The taxpayer shall maintain the records necessary to identify mobile property and to enumerate by state the mobile property miles traveled by mobile property. These records are subject to review by the Tax Commission or its agents.

H. This rule requires apportionment of income to this state if during the course of the income tax year, the trucking company:

1. owned or rented any real or personal property in this state;

2. made any pickups or deliveries within this state;

3. traveled more than 25,000 mobile property miles within this state, provided that the total mobile property miles traveled within this state during the income tax year exceeded three percent of the total mobile property miles traveled in all states by the trucking company during the period; or

4. made more than 12 trips into this state.

R865-6F-22. Treatment of Loss Carrybacks and Carryforwards Spanning a Change in Reporting Methods Pursuant to Utah Code Ann. Sections 59-7-402 and 59-7-403.

A. For purposes of this rule, "worldwide year" means a year in which a corporation filed a worldwide combined report as set forth in Sections 59-7-101(34) and 59-7-403.

B. For purposes of this rule, "water's edge year" means a year in which a corporation filed a combined report as set forth in Sections 59-7-101(33) and 59-7-402.

C. A corporation that receives permission from the Tax Commission to change its filing method to the water's edge method after having elected the worldwide method will be required to forfeit any unused loss carryovers that were generated in any worldwide year as a condition precedent to making that change. Any losses generated in a subsequent water's edge year may not be carried back against income earned in any year prior to the change to the water's edge method, but must be carried to a post-change water's edge year.

D. A corporation that elects the worldwide filing method subsequent to adoption of this rule will be required to forfeit any unused loss carryovers that were generated in any water's edge year. Any losses generated in a subsequent worldwide year may not be carried back against income earned in any year prior to the change to the worldwide election method, but must be carried to a post-change worldwide year.

R865-6F-23. Utah Steam Coal Tax Credit Pursuant to Utah Code Ann. Section 59-7-604.

A. Definitions.

1. "Permitted mine" means a mine for which a permit has been issued by the Division of Oil, Gas, and Mining pursuant to Title 40, Chapter 10, Coal Mining and Reclamation.

2. "Purchaser outside of the United States" means any company that purchases coal for shipment outside of the fifty states or the District of Columbia.

B. To qualify for the steam coal tax credit for taxable years beginning on or after January 1, 1993, sales to a purchaser outside of the United States must exceed the permitted mine's sales to a purchaser outside of the United States in the taxable year beginning on or after January 1, 1992, regardless of any change in ownership of the mine.

C. To qualify for the steam coal tax credit the coal must be exported outside of the United States, within a reasonable period of time. A reasonable period of time is considered to be within 90 days after the end of the tax year.

R865-6F-24. Attribution of Sales of Tangible Property to the Sales Factor for Apportionment of Business Income Pursuant to Utah Code Ann. Section 59-7-317.

A. For purposes of 15 U.S.C. Section 381, the phrase "activities within such state by or on behalf of such person" means the activities of any member of a unitary business as that term is defined in Section 59-7-302.

B. If the activity in this state of any member of a unitary business exceeds the activity protected by 15 U.S.C. Section 381, sales of tangible property into this state, from an out-of-state location by any member of the unitary business shall be included in this state's sales factor numerator under Section 59-7-317.

C. If any member of a unitary business is taxable in another state under Section 59-7-305, sales of tangible property from a Utah location, into that state by any member of the unitary business shall not be thrown back to this state as ordinarily provided under Section 59-7-318.

D. This rule is effective for taxable years beginning after December 31, 1992.

R865-6F-26. Historic Preservation Tax Credits Pursuant to Utah Code Ann. Section 59-7-608.

A. Definitions:

1. "Qualified rehabilitation expenditures" includes

architectural, engineering, and permit fees.

2. "Qualified rehabilitation expenditures" does not include movable furnishings.

3. "Residential" as used in Section 59-7-609 applies only to the use of the building after the project is completed.

B. Taxpayers shall file an application for approval of all proposed rehabilitation work with the Division of State History prior to the completion of restoration or rehabilitation work on the project. The application shall be on a form provided by the Division of State History.

C. Rehabilitation work must receive a unique certification number from the State Historic Preservation Office in order to be eligible for the tax credit.

D. In order to receive final certification and be issued a unique certification number for the project, the following conditions must be satisfied:

1. The project approved under B. must be completed.

2. Upon completion of the project, taxpayers shall notify the State Historic Preservation Office and provide that office an opportunity to review, examine, and audit the project. In order to be certified, a project shall be completed in accordance with the approved plan and the Secretary of the Interior's Standards for Rehabilitation.

3. Taxpayers restoring buildings not already listed on the National Register of Historic Places shall submit a complete National Register Nomination Form. If the nomination meets National Register criteria, the State Historic Preservation Office shall approve the nomination.

4. Projects must be completed, and the $10,000 expenditure threshold required by Section 59-7-608 must be met, within 36 months of the approval received pursuant to B.

5. During the course of the project and for three years thereafter, all work done on the building shall comply with the Secretary of the Interior's Standards for Rehabilitation.

E. Proof of State Historic Preservation Office certification shall be made by:

1. receiving an authorization form from the State Historic Preservation Office containing the certification number;

2. attaching that authorization form to the tax return for the year in which the credit is claimed.

F. Credit amounts shall be applied against Utah corporate franchise tax due in the tax year in which the project receives final certification under D.

G. Credit amounts greater than the amount of Utah corporate franchise tax due in a tax year shall be carried forward to the extent provided by Section 59-7-608.

H. Carryforward historic preservation tax credits shall be applied against Utah franchise tax due before the application of any historic preservation credits earned in the current year and on a first-earned, first-used basis.

I. Original records supporting the credit claimed must be maintained for three years following the date the return was filed claiming the credit.

R865-6F-27. Order of Credits Applied Against Utah Corporate Franchise Tax Due Pursuant to Utah Code Ann. Sections 9-2-413, 59-6-102, 59-7-601 through 59-7-613, and 59-13-202.

A. Taxpayers shall deduct credits authorized by Sections 9-2-413, 59-6-102, 59-7-601 through 59-7-613, and 59-13-202 against Utah corporate franchise tax due in the following order:

1. nonrefundable credits;

2. nonrefundable credits with a carryforward;

3. refundable credits.

R865-6F-28. Enterprise Zone Corporate Franchise Tax Credits Pursuant to Utah Code Ann. Sections 9-2-401 through 9-2-414.

A. Definitions:

1. "Business engaged in retail trade" means a business that makes a retail sale as defined in Section 59-12-102.

2. "Construction work" does not include facility maintenance or repair work.

3. "Employee" means a person who qualifies as an employee under Internal Revenue Service Regulation 26 CFR 31.3401(c)(1).

4. "Public utilities business" means a public utility under Section 54-2-1.

5. "Qualifying investment" does not include an investment made by a member of a unitary group in plant, equipment, or other depreciable property of another member of that unitary group.

6. "Transfer" pursuant to Section 9-2-411, means the relocation of assets and operations of a business, including personnel, plant, property, and equipment.

7. "Unitary group" is as defined in Section 59-7-101.

B. For purposes of the investment tax credit, an investment is a qualifying investment if:

1. The plant, equipment, or other depreciable property for which the credit is taken is located within the boundaries of the enterprise zone.

2. The plant, equipment, or other depreciable property for which the investment tax credit is taken is in a business that is operational within the enterprise zone.

C. The calculation of the number of full-time positions for purposes of the credits allowed under Section 9-2-413(1)(a) through (d) shall be based on the average number of employees reported to the Department of Workforce Services for the four quarters prior to the area's designation as an enterprise zone.

D. To determine whether at least 51 percent of the business firm's employees reside in the county in which the enterprise zone is located, the business firm shall consider every employee reported to the Department of Workforce Services for the tax year for which an enterprise zone credit is sought.

E. A business firm that conducts non-retail operations and is engaged in retail trade qualifies for the credits under Section 9-2-413 if the retail trade operations constitute a de minimis portion of the business firm's total operations.

F. An employee whose duties include both non-construction work and construction work does not perform a construction job if the construction work performed by the employee constitutes a de minimis portion of the employee's total duties.

G. Corporate franchise tax credits may not be used to offset or reduce the $100 minimum tax per corporation.

H. Records and supporting documentation shall be maintained for three years after the date any returns are filed to support the credits taken. For example: If credits are originally

taken in 1988 and unused portions are carried forward to 1992, records to support the original credits taken in 1988 must be maintained for three years after the date the 1992 return is filed.

I. If an enterprise zone designation is revoked prior to the expiration of the period for which it was designated, only tax credits earned prior to the loss of that designation will be allowed.

R865-6F-29. Taxation of Railroads Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

A. Definitions.

1. "Average value" of property means the amount determined by averaging the values of real and personal property at the beginning and ending of the income tax year. The Tax Commission may require the averaging of monthly values during the income year or other averaging as necessary to reflect properly the average value of the railroad's property.

2. "Business and nonbusiness income" are as defined in R865-6F-8(A).

3. "Car-mile" means a movement of a unit of car equipment a distance of one mile.

4. "Locomotive" means a self-propelled unit of equipment designed solely for moving other equipment.

5. "Locomotive-mile" means the movement of a locomotive a distance of one mile under its own power.

6. "Net annual rental rate" means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

7. "Original cost" means the basis of the property for federal income tax purposes (prior to any federal income tax adjustments except for subsequent capital additions, improvements thereto or partial dispositions). If the original cost of property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer.

8. "Property used during the income year" means property that is available for use in the taxpayer's trade or business during the income year.

9. "Rent" does not include the per diem and mileage charges paid by the taxpayer for the temporary use of railroad cars owned or operated by another railroad.

10. "Value of owned real and tangible personal property" means the original cost of owned real and tangible personal property.

11. "Value of rented real and tangible personal property" means the product of eight times the net annual rental rate of rented real and tangible personal property.

B. When a railroad has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the railroad's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income apportioned to this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

C. In general, the property factor shall be determined in accordance with R865-6F-8(G), the payroll factor in accordance with R865-6F-08(H),and the sales factor in accordance with R865-6F- 8(I), except as modified by this rule.

D. The denominator of the property factor shall be the average value of the total of the taxpayer's real and tangible personal property owned or rented and used within and without this state during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used within this state during the income year.

1. In determining the numerator of the property factor, all property except mobile or movable property such as passenger cars, freight cars, locomotives and freight containers located within and without this state during the income year shall be included in the numerator of the property factor.

2. Mobile or movable property such as passenger cars, freight cars, locomotives and freight containers located within and without this state during the income year shall be included in the numerator of the property factor in the ratio that locomotive-miles and car-miles in the state bear to the total of locomotive-miles and car-miles both within and without this state.

E. The denominator of the payroll factor is the total compensation paid within and without this state by the taxpayer during the income year for the production of business income. The numerator of the payroll factor is the amount of compensation paid within this state during the income year for the production of business income.

1. With respect to all personnel except engine men and trainmen performing services on interstate trains, compensation shall be included in the numerator as provided in R865-6F-8(H).

2. With respect to engine men and trainmen performing services on interstate trains, compensation shall be included in the numerator of the payroll factor in the ratio that their services performed in this state bear to their services performed within and without this state.

3. Compensation for services performed in this state shall be deemed to be the compensation reported or required to be reported by employees for determination of their income tax liability to this state.

F. In general, all revenue derived from transactions and activities in the regular course of the taxpayer's trade or business within and without this state that produce business income, except per diem and mileage charges that are calculated by the taxpayer, shall be included in the denominator of the revenue factor. The numerator of the revenue factor is the total revenue of the taxpayer within this state during the income year.

1. The total revenue of the taxpayer in this state during the income year, other than revenue from hauling freight, passengers, mail and express, shall be attributable to this state in accordance with R865-6F-8(I).

2. The total revenue of the taxpayer attributable to this state during the income year for the numerator of the revenue factor from hauling freight, mail and express shall be attributable to this state as follows:

a) Intrastate: all receipts from shipments that both originate and terminate within this state; and

b) Interstate: that portion of the receipts from each movement or shipment passing through, into, or out of this state is determined by the ratio that the miles traveled by the movement or shipment in this state bears to the total miles traveled by the movement or shipment from point of origin to destination.

3. The total revenue of the taxpayer attributable to this state during the income year for the numerator of the revenue factor from hauling passengers shall be attributable to this state as follows:

a) Intrastate: all receipts from the transportation of passengers, including mail and express handled in passenger service, that both originate and terminate within this state; and

b) Interstate: that portion of the receipts from the transportation of interstate passengers, including mail and express handled in passenger service, determined by the ratio that passenger miles in this state bear to the total of passenger miles within and without this state.

G. The taxpayer shall maintain the records necessary to identify mobile property and to enumerate by state the mobile property miles traveled by mobile property. These records are subject to review by the Tax Commission or its agents.

R865-6F-30. Higher Education Savings Incentive Program Tax Deduction Pursuant to Utah Code Ann. Sections 53B-8a-112, 59-7-105, and 59-7-106.

A. "Trust" means the Utah Educational Savings Plan Trust created pursuant to Section 53B-8a-103.

B. The trustee of the trust shall file a form TC-675H, Statement of Account with the Utah Educational Savings Plan Trust, with the commission, for each trust participant. The TC-675H shall contain the following information for the calendar year:

1. the amount contributed to the trust by the participant;

2. the income earned on the participant's contributions to the trust; and

3. the amount refunded to the participant pursuant to Section 53B-8a-109.

C. The trustee of the trust shall file form TC-675H with the commission on or before January 31 of the year following the calendar year on which the forms are based.

D. The trustee of the trust shall provide each trust participant with a copy of the form TC-675H on or before January 31 of the year following the calendar year on which the TC-675H is based.

E. The trustee of the trust shall maintain original records supporting the amounts listed on the TC-675H for the current year filing and the three previous year filings.

F. Trust participants must attach a copy of the TC-675H to their state tax return to qualify for the deduction allowed under Section 59-7-106.

R865-6F-31. Taxation of Publishing Companies Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

A. Definitions.

1. "Outer-jurisdictional property" means certain types of tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in the business of publishing, licensing, selling or otherwise distributing printed material, but that are not physically located in any particular state.

2. "Print" or "printed material" means the physical embodiment or printed version of any thought or expression, including a play, story, article, column or other literary, commercial, educational, artistic or other written or printed work. The determination of whether an item is or consists of print or printed material shall be made without regard to its content. Printed material may take the form of a book, newspaper, magazine, periodical, trade journal, or any other form of printed matter and may be contained on any medium or property.

3. "Purchaser" and "subscriber" mean the individual, residence, business or other outlet that is the ultimate or final recipient of the print or printed material. Neither term shall mean or include a wholesaler or other distributor of print or printed material.

4. "Terrestrial facility" shall include any telephone line, cable, fiber optic, microwave, earth station, satellite dish, antennae, or other relay system or device that is used to receive, transmit, relay or carry any data, voice, image or other information that is transmitted from or by any outer-jurisdictional property to the ultimate recipient thereof.

B. When a taxpayer in the business of publishing, selling, licensing or distributing books, newspapers, magazines, periodicals, trade journals, or other printed material has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the taxpayer's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income apportioned to this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

C. In general, the property factor shall be determined in accordance with R865-6F-8(G), the payroll factor in accordance with R865-6F-8(H), and the sales factor in accordance with R865-6F-8(I), except as modified by this rule.

D. All real and tangible personal property, including outer-jurisdictional property, whether owned or rented, that is used in the business shall be included in the denominator of the property factor.

E. All real and tangible personal property owned or rented by the taxpayer and used within this state during the tax period shall be included in the numerator of the property factor.

1. Outer-jurisdictional property owned or rented by the taxpayer and used in this state during the tax period shall be included in the numerator of the property factor in the ratio that the value of the property attributable to its use by the taxpayer in business activities within this state bears to the value of the property attributable to its use in the taxpayer's business activities within and without this state.

a) The value of outer-jurisdictional property attributed to the numerator of the property factor of this state shall be determined by the ratio that the number of uplinks and downlinks, or half-circuits, used during the tax period to transmit from this state and to receive in this state any data, voice, image or other information bears to the number of uplinks and downlinks or half-circuits used for transmissions within and without this state.

b) If information regarding uplink and downlink or half-circuit usage is not available or if measurement of activity is not applicable to the type of outer-jurisdictional property used by the taxpayer, the value of that property attributed to the numerator of the property factor of this state shall be determined by the ratio that the amount of time, in terms of hours and minutes of use, or other measurement of use of outer-jurisdictional property that was used during the tax period to transmit from this state and to receive within this state any data, voice, image or other information bears to the total amount of time or other measurement of use that was used for transmissions within and without this state.

c) Outer-jurisdictional property shall be considered to have been used by the taxpayer in its business activities within this state when that property, wherever located, has been employed by the taxpayer in any manner in the publishing, sale, licensing or other distribution of books, newspapers, magazines or other printed material, and any data, voice, image or other information is transmitted to or from this state either through an earth station or terrestrial facility located within this state.

(i) One example of the use of outer-jurisdictional property is when the taxpayer owns its own communications satellite or leases the use of uplinks, downlinks or circuits or time on a communications satellite for the purpose of sending messages to its newspaper printing facilities or employees. The states in which any printing facility that receives the satellite communications are located and the state from which the communications were sent would, under this rule, apportion the cost of the owned or rented satellite to their respective property factors based upon the ratio of the in-state use of the satellite to its usage within and without the state.

(ii) Assume that ABC Newspaper Co. owns a total of $400,000,000 of property and, in addition, owns and operates a communication satellite for the purpose of sending news articles to its printing plant in this state, as well as for communicating with its printing plants and facilities or news bureaus, employees and agents located in other states and throughout the world. Also assume that the total value of its real and tangible personal property that was permanently located in this state for the entire income year was valued at $3,000,000. Assume also that the original cost of the satellite is $100,000,000 for the tax period and that of the 10,000 uplinks and downlinks or half-circuits of satellite transmissions used by the taxpayer during the tax period, 200 or 2% are attributable to its satellite communications received in and sent from this state. Assume further that the company's mobile property that was used partially within this state, consisting of 40 delivery trucks, was determined to have an original cost of $4,000,000 and was used in this state for 95 days. The total value of property attributed to this state is determined as follows:

TABLE

Value of property permanently in state =	$3,000,000
Value of mobile property:	
95/365 or (.260274) x $4,000,000 =	$1,041,096
Value of leased satellite property used in-state:	
(.02) x $100,000,000 =	$2,000,000
Total value of property attributable to state =	$6,041,096
Total property factor percentage:	
$6,041,096/$500,000,000 =	1.2082%

F. The payroll factor shall be determined in accordance with Sections 59-7-315 and 59-7-316.

G. The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts that may be excluded under R865-6F-8(J)(3).

H. The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within this state, including the following:

1. Gross receipts derived from the sale of tangible personal property, including printed materials, delivered or shipped to a purchaser or a subscriber in this state; and

2. Except as provided in H.2.b), gross receipts derived from advertising and the sale, rental, or other use of the taxpayer's customer lists or any portion thereof shall be attributed to this state as determined by the taxpayer's circulation factor during the tax period. The circulation factor shall be determined for each publication of printed material containing advertising and shall be equal to the ratio that the taxpayer's in-state circulation to purchasers and subscribers of its printed material bears to its circulation to purchasers and subscribers within and without the state.

a) The circulation factor for an individual publication shall be determined by reference to the rating statistics as reflected in such sources as Audit Bureau of Circulations or other comparable sources, provided that the source selected is consistently used from year to year for that purpose. If none of the foregoing sources are available, or, if available, not in form or content sufficient for these purposes, the circulation factor shall be determined from the taxpayer's books and records.

b) When specific items of advertisements can be shown, upon clear and convincing evidence, to have been distributed solely to a limited regional or local geographic area in which this state is located, the taxpayer may petition, or the Tax Commission may require, that a portion of those receipts be attributed to the sales factor numerator of this state on the basis of a regional or local geographic area circulation factor and not upon the basis of the circulation factor provided by H.2.a). This attribution shall be based upon the ratio that the taxpayer's circulation to purchasers and subscribers located in this state of the printed material containing specific items of advertising bears to its total circulation of printed material to purchasers and subscribers located within the regional or local geographic area. This alternative attribution method shall be permitted only upon the condition that receipts are not double counted or otherwise included in the numerator of any other state.

c) If the purchaser or subscriber is the United States government or if the taxpayer is not taxable in a state, the gross receipts from all sources, including the receipts from the sale of

printed material, from advertising, and from the sale, rental or other use of the taxpayer's customer lists, or any portion thereof that would have been attributed by the circulation factor to the numerator of the sales factor for that state, shall be included in the numerator of the sales factor of this state if the printed material or other property is shipped from an office, store, warehouse, factory, or other place of storage or business in this state.

R865-6F-32. Taxation of Financial Institutions Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

A. Definitions.

1. "Billing address" means the location indicated in the books and records of the taxpayer on the first day of the taxable year, or on the later date in the taxable year when the customer relationship began, where any notice, statement or bill relating to a customer's account is mailed.

2. "Borrower or credit card holder located in this state" means:

a) a borrower, other than a credit card holder, that is engaged in a trade or business that maintains its commercial domicile in this state; or

b) a borrower that is not engaged in a trade or business, or a credit card holder, whose billing address is in this state.

3. "Commercial domicile" means:

a) the place from which the trade or business is principally managed and directed; or

b) if a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, that taxpayer's commercial domicile shall be deemed for the purposes of this rule to be the state of the United States or the District of Columbia from which that taxpayer's trade or business in the United States is principally managed and directed. It shall be presumed, subject to rebuttal, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of those employees are performed, as of the last day of the taxable year.

4. "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services that are included in the employee's gross income under the federal Internal Revenue Code. In the case of employees not subject to the federal Internal Revenue Code, the determination of whether payments constitute gross income under the federal Internal Revenue Code shall be made as though those employees were subject to the federal Internal Revenue Code.

5. "Credit card" means a credit, travel, or entertainment card.

6. "Credit card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.

7. "Employee" means, with respect to a particular taxpayer, any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

8. "Financial institution" means:

a) any corporation or other business entity registered under state law as a bank holding company or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended;

b) a national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. Sections21 et seq.;

c) a savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. Section 1813(b)(1);

d) any bank, industrial loan corporation, or thrift institution incorporated or organized under the laws of any state;

e) any corporation organized under the provisions of 12 U.S.C. Sections611 through 631.

f) any agency or branch of a foreign depository as defined in 12 U.S.C. Section3101;

g) a production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired;

h) any corporation whose voting stock is more than 50 percent owned, directly or indirectly, by any person or business entity described in A.8.a) through A.8.g), other than an insurance company taxable under Title 59, Chapter 9, Taxation of Admitted Insurers;

i) a corporation or other business entity that derives more than 50 percent of its total gross income for financial accounting purposes from finance leases. For purposes of this subsection, a "finance lease" shall mean any lease transaction that is the functional equivalent of an extension of credit and that transfers substantially all of the benefits and risks incident to the ownership of property. The phrase shall include any direct financing lease or leverage lease that meets the criteria of Financial Accounting Standards Board Statement No. 13, Accounting for Leases, or any other lease that is accounted for as a financing lease by a lessor under generally accepted accounting principles. For this classification to apply:

(1) the average of the gross income in the current tax year and immediately preceding two tax years must satisfy the more than 50 percent requirement; and

(2) gross income from incidental or occasional transactions shall be disregarded;

j) any other person or business entity, other than an insurance company, a credit union exempt from the corporation franchise tax under Section 59-7-102, a real estate broker, or a securities dealer, that derives more than 50 percent of its gross income from activities that a person described in A.8.b) through A.8.g) and A.8.i) is authorized to transact.

(1) For purposes of this subsection, the computation of gross income shall not include income from non-recurring, extraordinary items; and

(2) The Tax Commission is authorized to exclude any person from the application of A.8.j) upon receipt of proof, by clear and convincing evidence, that the income-producing activity of that person is not in substantial competition with those persons described in A.8.b) through A.8.g) and A.8.i).

9. "Gross rents" means the actual sum of money or other

consideration payable for the use or possession of property.

a) Gross rents includes:

(1) any amount payable for the use or possession of real property or tangible property whether designated as a fixed sum of money or as a percentage of receipts, profits or otherwise;

(2) any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs or any other amount required to be paid by the terms of a lease or other arrangement; and

(3) a proportionate part of the cost of any improvement to real property, made by or on behalf of the taxpayer, that reverts to the owner or lessor upon termination of a lease or other arrangement. The amount included in gross rents is the amount of amortization or depreciation allowed in computing the taxable income base for the taxable year. However, where a building is erected on leased land by or on behalf of the taxpayer, the value of the land is determined by multiplying the gross rent by eight and the value of the building is determined in the same manner as if owned by the taxpayer.

b) Gross rents does not include:

(1) reasonable amounts payable as separate charges for water and electric service furnished by the lessor;

(2) reasonable amounts payable as service charges for janitorial services furnished by the lessor;

(3) reasonable amounts payable for storage, provided those amounts are payable for space not designated and not under the control of the taxpayer; and

(4) that portion of any rental payment applicable to the space subleased from the taxpayer and not used by the taxpayer.

10. "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and the taxpayer's customer, or the purchase, in whole or in part, of an extension of credit from another.

a) Loan includes participations, syndications, and leases treated as loans for federal income tax purposes.

b) Loan does not include properties treated as loans under Section 595 of the federal Internal Revenue Code, futures or forward contracts, options, notional principal contracts such as swaps, credit card receivables, including purchased credit card relationships, non-interest bearing balances due from depository institutions, cash items in the process of collection, federal funds sold, securities purchased under agreements to resell, assets held in a trading account, securities, interests in a real estate mortgage investment conduit as defined in Section 860D of the Internal Revenue Code, or other mortgage-backed or asset-backed security, and other similar items.

11. "Loans secured by real property" means that fifty percent or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.

12. "Merchant discount" means the fee, or negotiated discount, charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder.

13. "Participation" means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

14. "Person" means an individual, estate, trust, partnership, corporation, and any other business entity.

15. "Principal base of operations" means:

a) with respect to transportation property, the place of more or less permanent nature from which that property is regularly directed or controlled; and

b) with respect to an employee, the place of more or less permanent nature from which the employee regularly:

(1) starts his work and to which he customarily returns in order to receive instructions from his employer;

(2) communicates with his customers or other persons; or

(3) performs any other functions necessary to the exercise of his trade or profession at some other point or points.

16. a) "Real property owned" and "tangible personal property owned" mean real and tangible personal property, respectively:

(1) on which the taxpayer may claim depreciation for federal income tax purposes; or

(2) property to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes, or could claim depreciation if subject to federal income tax.

b) Real and tangible personal property do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

17. "Regular place of business" means an office at which the taxpayer carries on business in a regular and systematic manner and is continuously maintained, occupied, and used by employees of the taxpayer.

18. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country.

19. "Syndication" means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

20. "Taxable" means:

a) a taxpayer is subject in another state to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, a corporate stock tax, including a bank shares tax, a single business tax, an earned surplus tax, or any tax imposed upon or measured by net income; or

b) another state has jurisdiction to subject the taxpayer to taxes regardless of whether that state actually imposes those taxes.

21. "Transportation property" means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels and motor vehicles, as well as any equipment or containers attached to that property, such as rolling stock, barges, and trailers.

B. Apportionment and Allocation.

1. A financial institution whose business activity is taxable both within and without this state, or a financial institution whose business activity is taxable within this state and is a member of a unitary group that includes one or more financial institutions where any member of the group is taxable without this state, shall allocate and apportion its net income as provided

in this rule. All items of nonbusiness income shall be allocated pursuant to the provisions of Section 59-7-306. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States, whose effectively connected income, as defined under the federal Internal Revenue Code, is taxable both within this state and within another state, other than the state in which it is organized, shall allocate and apportion its net income as provided in this rule.

2. All business income shall be apportioned to this state by multiplying that income by the apportionment percentage. The apportionment percentage is determined by adding the taxpayer's receipts factor described in C., property factor described in D., and payroll factor described in E., and dividing that sum by three. If one of the factors is missing, the two remaining factors are added and the sum is divided by two. If two of the factors are missing, the remaining factor is the apportionment percentage. A factor is missing if both its numerator and denominator are zero, but not merely because its numerator is zero.

3. Each factor shall be computed according to the cash or accrual method of accounting as used by the taxpayer for the taxable year.

4. If a unitary group of corporations filing a combined report includes one or more corporations meeting the definition of financial institution and one or more corporations that do not meet that definition, the provisions of this rule regarding the calculation of the property, payroll, and receipts factors of the apportionment fraction shall apply only to those corporations meeting the definition of financial institution. Those corporations not meeting the definition of financial institution shall compute their apportionment data based on Tax Commission rule R865-6f-8 or such other industry apportionment rule adopted by the Tax Commission that may be applicable. The apportionment data of all members of the unitary group shall be included in calculating a single apportionment fraction for the unitary group. The numerators and denominators of the property, payroll, and receipts factors of the financial institutions shall be added to the numerators and denominators, respectively, of the property, payroll, and sales factors of the nonfinancial institutions to determine the property, payroll, and sales factors of the unitary group.

C. Receipts Factor.

1. In general. The receipts factor is a fraction, the numerator of which is the receipts of the taxpayer in this state during the taxable year and the denominator of which is the receipts of the taxpayer within and without this state during the taxable year. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator. The receipts factor shall include only those receipts that constitute business income and are included in the computation of the apportionable income base for the taxable year.

2. Receipts from the lease of real property. The numerator of the receipts factor includes receipts from the lease or rental of real property owned by the taxpayer and receipts from the sublease of real property, if the property is located within this state.

3. Receipts from the lease of tangible personal property.

a) Except as described in C.4., the numerator of the receipts factor includes receipts from the lease or rental of tangible personal property owned by the taxpayer if the property is located within this state when it is first placed in service by the lessee.

b) Receipts from the lease or rental of transportation property owned by the taxpayer are included in the numerator of the receipts factor to the extent that the property is used in this state.

(1) The extent an aircraft will be deemed to be used in this state and the amount of receipts that shall be included in the numerator of this state's receipts factor are determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft.

(2) If the extent of the use of any transportation property within this state cannot be determined, that property will be deemed to be used wholly in the state in which the property has its principal base of operations.

(3) A motor vehicle will be deemed to be used wholly in the state in which it is registered.

4. Interest from loans secured by real property.

a) The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the receipts described in this subsection are included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, the receipts described in this subsection shall be included in the numerator of the receipts factor if the borrower is located in this state.

b) The determination of whether the real property securing a loan is located within this state shall be made as of the time the original agreement was made, and any and all subsequent substitutions of collateral shall be disregarded.

5. Interest from loans not secured by real property. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state.

6. Net gains from the sale of loans. The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of Section 1286 of the Internal Revenue Code.

a) The amount of net gains, but not less than zero, from the sale of loans secured by real property included in the numerator is determined by multiplying the net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to C.4., and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

b) The amount of net gains, but not less than zero, from the sale of loans not secured by real property included in the numerator is determined by multiplying the net gains by a fraction the numerator of which is the amount included in the

numerator of the receipts factor pursuant to C.5., and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

7. Receipts from credit card receivables. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from credit card receivables and receipts from fees charged to card holders, such as annual fees, if the billing address of the card holder is in this state.

8. Net gains from the sale of credit card receivables. The numerator of the receipts factor includes net gains, but not less than zero, from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to C.7., and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

9. Credit card issuer's reimbursement fees. The numerator of the receipts factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to C.7., and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

10. Receipts from merchant discount. The numerator of the receipts factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state. The receipts shall be computed net of any cardholder charge backs, but shall not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.

11. Loan servicing fees.

a) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to C.4., and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

b) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to C.5., and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

c) In circumstances in which the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor shall include those fees if the borrower is located in this state.

12. Receipts from services. The numerator of the receipts factor includes receipts from services not otherwise apportioned under this section if the service is performed in this state. If the service is performed both within and without this state, the numerator of the receipts factor includes receipts from services not otherwise apportioned under this section if a greater proportion of the income-producing activity is performed in this state based on cost of performance.

13. Receipts from investment assets and activities and trading assets and activities.

a) Interest, dividends, net gains, but not less than zero, and other income from investment assets and activities and from trading assets and activities shall be included in the receipts factor.

b) Investment assets and activities and trading assets and activities include investments securities, trading account assets, federal funds, securities purchased and sold under agreements to resell or repurchase, options, futures contracts, forward contracts, notional principal contracts such as swaps, equities, and foreign currency transactions.

c) The receipts factor shall include the following investment and trading assets and activities:

(1) The receipts factor shall include the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(2) The receipts factor shall include the amount by which interest, dividends, gains and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from those assets and activities.

d) The numerator of the receipts factor includes interest, dividends, net gains, but not less than zero, and other income from investment assets and activities and from trading assets and activities described in C.13. that are attributable to this state.

(1) The amount of interest, dividends, net gains, but not less than zero, and other income from investment assets and activities in the investment accounts attributed to this state and included in the numerator is determined by multiplying all such income from assets and activities by a fraction, the numerator of which is the average value of the assets properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all those assets.

(2) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount of those funds and securities described in C.13.c)(1) by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all those funds and securities.

(3) The amount of interest, dividends, gains, and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book and foreign currency transactions, but excluding amounts described in C.13.d)(1) and C.13.d)(2), attributable to this state and included in the numerator is determined by multiplying the amount described in C.13.c)(2) by a fraction, the numerator of which is the average value of those trading assets that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all those assets.

(4) For purposes of this subsection, average value shall be

determined using the rules for determining the average value of tangible personal property set forth in D.3. and D.4.

e) In lieu of using the method set forth in C.13.d), the taxpayer may elect, or the Tax Commission may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this subsection.

(1) The amount of interest, dividends, net gains, but not less than zero, and other income from investment assets and activities in the investment account attributed to this state and included in the numerator is determined by multiplying all income from those assets and activities by a fraction, the numerator of which is the gross income from those assets and activities properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all those assets and activities.

(2) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount of those funds and securities described in C.13.c)(1) by a fraction, the numerator of which is the gross income from those funds and securities properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all those funds and securities.

(3) The amount of interest, dividends, gains and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book and foreign currency transactions, but excluding amounts described in C.13.e)(1) or C.13.e)(2), attributable to this state and included in the numerator is determined by multiplying the amount described in C.13.c)(2)by a fraction, the numerator of which is the gross income from those trading assets and activities properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all those assets and activities.

f) If the taxpayer elects or is required by the Tax Commission to use the method set forth in C.13.e), the taxpayer shall use this method on all subsequent returns unless the taxpayer receives prior permission from the Tax Commission to use, or the Tax Commission requires, a different method.

g) The taxpayer shall have the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one regular place of business is in this state and one regular place of business is outside this state, that asset or activity shall be considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, policies and guidelines shall be presumed to be established at the commercial domicile of the taxpayer.

14. All other receipts. The numerator of the receipts factor includes all other receipts pursuant to the rules set forth in Rule R865-6F-8(I) and (J).

15. Attribution of certain receipts to commercial domicile.

a) Except as provided in C.15.b), all receipts that would be assigned under this section to a state in which the taxpayer is not taxable shall be included in the numerator of the receipts factor if the taxpayer's commercial domicile is in this state.

b) (1) If a unitary group includes one or more financial institutions, and if any member of the unitary group is subject to the taxing jurisdiction of this state, the receipts of each financial institution in the unitary group shall be included in the numerator of this state's receipts factor as provided in C.1. through C.14. rather than being attributed to the commercial domicile of the financial institution as provided in C.15.a).

(2) If a unitary group includes one or more financial institutions whose commercial domicile is in this state, and if any member of the unitary group is taxable in another state under section 59-7-305, the receipts of each financial institution in the unitary group that would be included in the numerator of the other state's receipts factor under C.1. through C.14. may not be included in the numerator of this state's receipts factor.

D. Property Factor.

1. In General.

a) For taxpayers that do not elect to include the property described in D.7. through D.9. within the property factor, the property factor is a fraction, the numerator of which is the average value of real property and tangible personal property owned by or rented to the taxpayer that is located or used within this state during the taxable year, and the denominator of which is the average value of all that property located or used within and without this state during the taxable year.

b) For taxpayers that elect to include the property described in D.7. through D.9. within the property factor, the property factor is a fraction, the numerator of which is the average value of real property and tangible personal property owned by or rented to the taxpayer that is located or used within this state during the taxable year, and the average value of the taxpayer's loans and credit card receivables that are located within this state during the taxable year, and the denominator of which is the average value of all that property located or used within and without this state during the taxable year.

2. Property included. The property factor shall include only property the income or expenses of which are included, or would have been included if not fully depreciated or expensed, or depreciated or expensed to a nominal amount, in the computation of the apportionable income base for the taxable year.

3. Value of property owned by the taxpayer.

a) For taxpayers that do not elect to include the property described in D.7. through D.9. within the property factor, the value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of that property for federal income tax purposes without regard to depletion, depreciation or amortization.

b) For taxpayers that elect to include the property described in D.7. through D.9. within the property factor:

(1) The value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of that property for federal income tax purposes without regard to depletion, depreciation or amortization.

(2) Loans are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a loan is charged-off in whole or in part for federal income tax purposes, the portion of the loan charged off is not outstanding. A specifically allocated reserve established pursuant to regulatory or financial accounting guidelines that is treated as charged-off for federal income tax purposes shall be treated as charged-off for purposes of this rule.

(3) Credit card receivables are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a credit card receivable is charged-off in whole or in part for federal income tax purposes, the portion of the receivable charged-off is not outstanding.

4. Average value of property owned by the taxpayer. The average value of property owned by the taxpayer is computed on an annual basis by adding the value of the property on the first day of the taxable year and the value on the last day of the taxable year and dividing the sum by two.

a) If averaging on this basis does not properly reflect average value, the Tax Commission may require averaging on a more frequent basis, or the taxpayer may elect to average on a more frequent basis.

b) When averaging on a more frequent basis is required by the Tax Commission or is elected by the taxpayer, the same method of valuation must be used consistently by the taxpayer with respect to property within and without this state and on all subsequent returns unless the taxpayer receives prior permission from the Tax Commission to use a different method, or the Tax Commission requires a different method of determining average value.

5. Average value of real property and tangible personal property rented to the taxpayer.

a) The average value of real property and tangible personal property that the taxpayer has rented from another and are not treated as property owned by the taxpayer for federal income tax purposes, shall be determined annually by multiplying the gross rents payable during the taxable year by eight.

b) If the use of the general method described in this subsection results in inaccurate valuations of rented property, any other method that properly reflects the value may be adopted by the Tax Commission or by the taxpayer when approved in writing by the Tax Commission. Once approved, that other method of valuation must be used on all subsequent returns unless the taxpayer receives prior approval from the Tax Commission to use a different method, or the Tax Commission requires a different method of valuation.

6. Location of real property and tangible personal property owned or rented to the taxpayer.

a) Except as described in D.6.b), real property and tangible personal property owned by or rented to the taxpayer are considered located within this state if they are physically located, situated, or used within this state.

b) Transportation property is included in the numerator of the property factor to the extent that the property is used in this state.

(1) The extent an aircraft will be deemed to be used in this state and the amount of value that shall be included in the numerator of this state's property factor is determined by multiplying the average value of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft everywhere.

(2) If the extent of the use of any transportation property within this state cannot be determined, the property will be deemed to be used wholly in the state in which the property has its principal base of operations.

(3) A motor vehicle will be deemed to be used wholly in the state in which it is registered.

7. Location of Loans.

a) A loan is considered located within this state if it is properly assigned to a regular place of business of the taxpayer within this state.

b) A loan is properly assigned to the regular place of business with which it has a preponderance of substantive contacts. A loan assigned by the taxpayer to a regular place of business without the state shall be presumed to have been properly assigned if:

(1) the taxpayer has assigned, in the regular course of its business, the loan on its records to a regular place of business consistent with federal or state regulatory requirements;

(2) the assignment on its records is based upon substantive contacts of the loan to the regular course of business; and

(3) the taxpayer uses the records reflecting assignment of loans for the filing of all state and local tax returns for which an assignment of loans to a regular place of business is required.

c) The presumption of proper assignment of a loan provided in D.7.b) may be rebutted upon a showing by the Tax Commission, supported by a preponderance of the evidence, that the preponderance of substantive contacts regarding the loan did not occur at the regular place of business to which it was assigned on the taxpayer's records. When the presumption has been rebutted, the loan shall then be located within this state if:

(1) the taxpayer had a regular place of business within this state at the time the loan was made; and

(2) the taxpayer fails to show, by a preponderance of the evidence, that the preponderance of substantive contacts regarding the loan did not occur within this state.

d) In the case of a loan assigned by the taxpayer to a place without this state that is not a regular place of business, it shall be presumed, subject to rebuttal by the taxpayer on a showing supported by the preponderance of the evidence, that the preponderance of substantive contacts regarding the loan occurred within this state if, at the time the loan was made the taxpayer's commercial domicile, as defined in this rule, was within this state.

e) To determine the state in which the preponderance of substantive contacts relating to a loan have occurred, the facts and circumstances regarding the loan at issue shall be reviewed on a case-by-case basis, and consideration shall be given to activities such as the solicitation, investigation, negotiation, approval, and administration of the loan.

(1) Solicitation. Solicitation is either active or passive.

(a) Active solicitation occurs when an employee of the taxpayer initiates the contact with the customer. The activity is located at the regular place of business at which the taxpayer's employee is regularly connected or working out of, regardless of where the services of the employee were actually performed.

(b) Passive solicitation occurs when the customer initiates the contact with the taxpayer. If the customer's initial contact was not at a regular place of business of the taxpayer, the regular place of business, if any, where the passive solicitation occurred is determined by the facts in each case.

(2) Investigation. Investigation is the procedure whereby employees of the taxpayer determine the credit-worthiness of the customer as well as the degree of risk involved in making a particular agreement. The activity is located at the regular place of business at which the taxpayer's employees are regularly connected or working out of, regardless of where the services of those employees were actually performed.

(3) Negotiation. Negotiation is the procedure whereby employees of the taxpayer and its customer determine the terms of the agreement, such as amount, duration, interest rate, frequency of repayment, currency denomination, and security required. The activity is located at the regular place of business at which the taxpayer's employees are regularly connected or working out of, regardless of where the services of those employees were actually performed.

(4) Approval. Approval is the procedure whereby employees or the board of directors of the taxpayer make the final determination whether to enter into the agreement.

(a) The activity is located at the regular place of business at which the taxpayer's employees are regularly connected or working out of, regardless of where the services of those employees were actually performed.

(b) If the board of directors makes the final determination, the activity is located at the commercial domicile of the taxpayer.

(5) Administration. Administration is the process of managing the account.

(a) Administration includes bookkeeping, collecting the payments, corresponding with the customer, reporting to management regarding the status of the agreement and proceeding against the borrower or the security interest if the borrower is in default.

(b) The activity is located at the regular place of business that oversees this activity.

8. Location of credit card receivables. For purposes of determining the location of credit card receivables, credit card receivables shall be treated as loans and shall be subject to the provisions of D.7.

9. Period for which properly assigned loan remains assigned. A loan that has been properly assigned to a state shall, absent any change of material fact, remain assigned to that state for the length of the original term of the loan. Thereafter, the loan may be properly assigned to another state if the loan has a preponderance of substantive contact to a regular place of business in that state.

10. Each taxpayer shall make an initial election on whether to include the property described in D.7. through D.9. within the property factor. The initial election is the election made or the filing position taken on the first return filed after the effective date of this rule. This election is irrevocable for a period of three years from the time the initial election is made, except in the case where a substantial ownership change occurs and commission approval is obtained to change the election. After the initial three-year period, the election may be revocable only with the prior approval of the commission and shall require the showing of a significant change in circumstance.

E. Payroll factor.

1. In general. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the taxable year by the taxpayer for compensation and the denominator of which is the total compensation paid by the taxpayer both within and without this state during the taxable year. The payroll factor shall include only that compensation included in the computation of the apportionable income tax base for the taxable year.

2. Compensation relating to nonbusiness income and independent contractors. The compensation of any employee for services or activities connected with the production of nonbusiness income, and payments made to any independent contractor or any other person not properly classifiable as an employee, shall be excluded from both the numerator and denominator of this factor.

3. When compensation paid in this state. Compensation is paid in this state if any one of the following tests, applied consecutively, is met:

a) The employee's services are performed entirely within this state.

b) The employee's services are performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The term "incidental"means any service that is temporary or transitory in nature, or that is rendered in connection with an isolated transaction.

c) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

(1) if the employee's principal base of operations is within this state;

(2) if there is no principal base of operations in any state in which some part of the services are performed, but the place from which the services are directed or controlled is in this state; or

(3) if the principal base of operations and the place from which the services are directed or controlled are not in any state in which some part of the service is performed but the employee's residence is in this state.

F. This rule is effective for taxable years beginning after December 31, 1997.

R865-6F-33. Taxation of Telecommunications Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

A. Definitions.

1. "Call" means a specific telecommunications transmission as described in A.6.

2. "Channel termination point" means the point at which information can enter or leave the telecommunications network.

3. "Communications channel" means a communications path, which can be one-way or two-way, depending on the channel, between two or more points. The path may be designed for the transmission of signals representing human speech, digital or analog data, facsimile, or images.

4. "Outerjurisdictional property" means tangible personal property, such as orbiting satellites, undersea transmission

cables and the like, that are owned or rented by the taxpayer and used in a telecommunications business, but that are not physically located in any particular state.

5. "Private telecommunications service" means a dedicated telephone service that entitles the subscriber to the exclusive or priority use of a communications channel or groups of communications channels from one or more channel termination points to another channel termination point.

6. "Telecommunications" means the electronic transmission of voice, data, image, and other information through the use of any medium such as wires, cables, electromagnetic waves, light waves, or any combination of those or similar media now in existence or that might be devised, but telecommunications does not include the information content of any such transmission.

7. "Telecommunications service" means providing telecommunications, including services provided by telecommunication service resellers, for a charge and includes telephone service, telegraph service, paging service, personal communication services and mobile or cellular telephone service, but does not include electronic information service or Internet access service.

B. Apportionment and Allocation.

1. A corporation engaged in the business of telecommunications that is taxable both within and without this state, shall allocate and apportion its net income as provided in this rule. All items of nonbusiness income shall be allocated pursuant to the provisions of Section 59-7-306.

2. All business income shall be apportioned to this state by multiplying that income by the apportionment percentage. The apportionment percentage is determined by adding the taxpayer's receipts factor, property factor and payroll factor and dividing that sum by three. If one of the factors is missing, the remaining factors are added and that sum is divided by two. If two of the factors are missing, the remaining factor is the apportionment percentage. A factor is missing if both its numerator and denominator are zero.

3. Except as otherwise provided in this rule, the property factor shall be determined in accordance with Tax Commission rule R865-6F-8(G), the payroll factor in accordance with rule R865-6F-8(H) and the sales factor in accordance with rule R865-6F-8(I).

C. Property Factor.

1. Outerjurisdictional property that is used by a taxpayer in providing a telecommunications service shall be attributed to this state based on the ratio of property within this state used in providing that service, to property everywhere used in providing the service, exclusive of property not located in any state. The term "property" as used herein refers to property includable in the property factor of the Utah apportionment fraction as defined in Tax Commission rule R865-6F-8(G).

D. Sales Factor Numerator.

1. The following sales and receipts from telecommunications service other than interstate or international private telecommunications service, shall be included in the Utah sales and receipts numerator:

a) receipts derived from charges for providing telephone "access" from a location within Utah. "Access" means that a call can be made or received from a point within this state. An example of this type of receipt is a monthly subscriber fee billed with reference to equipment located in Utah;

b) receipts derived from charges for unlimited calling privileges, if the charges are billed by reference to equipment located in Utah;

c) receipts derived from charges for individual toll calls that originate and terminate in Utah;

d) receipts derived from charges for individual toll calls that either originate or terminate in Utah and are billed by reference to a customer or equipment located in Utah;

e) receipts derived from any other charges if the charges are not includable in another state's sales factor numerator under that state's law, and the customer's billing address is in Utah.

2. Gross receipts derived from providing interstate and international private telecommunications services shall be determined as follows:

a) If the segment of the interstate or international channel between each termination point is separately billed, 100 percent of the charge imposed at each termination point in this state and for service in this state between those points is includable in the Utah sales factor. In addition, 50 percent of the charge imposed for service between a channel termination point outside this state and a point inside the state shall be included in the Utah sales factor. For purposes of this paragraph, termination points shall be measured by the nearest termination point inside the state to the first termination point outside the state.

b) If each segment of the interstate or international channel is not separately billed, the Utah sales shall be the same portion of the interstate or international channel charge that the number of channel termination points within this state bears to the total number of channel termination points within and without this state.

R865-6F-34. Qualified Subchapter S Subsidiaries Pursuant to Utah Code Ann. Section 59-7-701.

A. "Qualified subchapter S subsidiary" means a qualified subchapter S subsidiary as defined in Section 1361(b), Internal Revenue Code.

B. For purposes of Title 59, Chapter 7, Part 7, a qualified subchapter S subsidiary shall be treated in the same manner as it is treated for federal tax purposes under Section 1361(b), Internal Revenue Code.

C. An S corporation that owns one or more qualified subchapter S subsidiaries must take into account the activities of each qualified subchapter S subsidiary in determining whether the S corporation parent is doing business in Utah. For purposes of this determination, all of a subsidiary's activities will be attributed to the S corporation parent.

D. For purposes of Title 59, Chapter 7, Part 7:

1. the Utah property, payroll, and sales of each qualified subchapter S subsidiary shall be added, respectively, to the Utah property, payroll, and sales of the S corporation parent to determine the numerators of the property, payroll, and sales factors; and

2. the total property, payroll, and sales of each qualified subchapter S subsidiary shall be added, respectively, to the total property, payroll, and sales of the S corporation parent to determine the denominators of the property, payroll, and sales factors.

E. Except as provided in D., the apportionment fraction for an S corporation shall be calculated based on Sections 59-7-311 through 59-7-321 and as provided in Tax Commission rule R865-6F-8.

R865-6F-35. S Corporation Determination of Tax Pursuant to Utah Code Ann. Section 59-7-703.

A. For purposes of Section 59-7-703(1)(a)(i), "items of income or loss from Schedule K of the 1120S federal form" shall be calculated by adding back to the line on the Schedule K labeled "Income (loss)" any amount deducted on that schedule for charitable contributions. If the S corporation was not required to complete the line labeled "Income (loss)" on the Schedule K, a pro forma calculation of the amount that would have been entered on the "Income (loss)" line shall be used for purposes of this rule.

B. The rate that the S corporation shall withhold for nonresident shareholders shall be computed as follows:

1. A deduction equal to 15 percent of the Utah income attributable to nonresident shareholders shall be allowed in place of a standard deduction, itemized deductions, personal exemptions, federal tax determined for the same period, or any other deductions.

a) An S corporation that is entitled to subtract a loss carryforward and that elected, under the laws in effect prior to January 1, 1994, to use Option A as the method to pay its taxes, shall apply the 15 percent deduction to Utah income attributable to nonresident shareholders after the subtraction for loss carryforwards.

2. The tax shall be computed using the maximum Utah individual income tax rate applied to the combined nonresident shareholders' share of the S corporation's income after deduction of the amount allowed under B.1.

C. An S corporation with nonresident shareholders shall complete Schedule N of form TC-20S, and shall provide the following information for each nonresident shareholder:

1. name;
2. social security number;
3. percentage of S corporation held; and
4. amount of Utah tax paid or withheld on behalf of that shareholder.

KEY: taxation, franchise, historic preservation, trucking industries

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9-2-401
through
9-2-414
16-10a-1501
through
16-10a-1533
53B-8a-112
59-6-102
59-7-102
59-7-104
through
59-7-106
59-7-108
59-7-109
59-7-110
59-7-112
59-7-302
through
59-7-321
59-7-402
59-7-403
59-7-501
59-7-502
59-7-505
59-7-601
through
59-7-613
59-7-608
59-7-701
59-7-703
59-10-603
59-13-202

R865. Tax Commission, Auditing.
R865-9I. Income Tax.
R865-9I-2. Definitions of Resident and Military Personnel Pursuant to Utah Code Ann. Section 59-10-103.

A. "Resident" or "resident taxpayer" means "resident individual" as defined in Utah Code Ann. Section 59-10-103.

B. "Nonresident" or "nonresident taxpayer" means "nonresident individual" as defined in Utah Code Ann. Section 59-10-103.

C. "Part-year resident" means an individual who changes his status during the tax year from a resident to a nonresident or from a nonresident to a resident.

D. "Domicile" means the place where an individual has a true, fixed, permanent home and principal establishment, and to which place he has (whenever he is absent) the intention of returning. It is the place in which a person has voluntarily fixed the habitation of himself and family, not for a mere special or temporary purpose, but with the present intention of making a permanent home. After domicile has been established, two things are necessary to create a new domicile: first, an abandonment of the old domicile; and second, the intention and establishment of a new domicile. The mere intention to abandon a domicile once established is not of itself sufficient to create a new domicile; for before a person can be said to have changed his domicile, a new domicile must be shown.

E. A person in active military service shall not lose his domicile in Utah solely by reason of being absent under military orders. A person in active military service stationed in Utah solely by reason of military orders does not thereby establish a new domicile in this state for income tax purposes. Reference: Soldiers and Sailors Relief Act, Title 50, U.S. Code Section 574.

1. It is possible for an individual in active military service to change his domicile by definite intent supported by actions. He may be required to prove any change by disclosing actions taken.

2. A nonresident serviceman is tax exempt only on his active service pay; all other income is taxable as provided by the nonresident provisions of the Utah law.

3. The spouse of a person in active military service generally is considered to have that person's domicile and is subject to income tax laws and rules that apply to the service person.

R865-9I-3. Credit for Income Tax Paid by an Individual to Another State Pursuant to Utah Code Ann. Section 59-10-106.

A. A Utah resident taxpayer is required to report his entire state taxable income pursuant to Utah Code Ann. Section 59-10-106 even though part of the income may be from sources outside this state.

B. Except to the extent allowed in D., a resident taxpayer may claim the credit provided in Section 59-10-106 by:

1. filing a resident Utah return showing the computation of tax based on total income before any credit for taxes in another state;

2. attaching a schedule for each state to which taxes were due, properly filled in to determine each allowable credit; and

3. attaching a signed copy of each return filed in another state for the same period.

C. A part-year resident taxpayer may claim credit on that portion of income subject to both Utah tax and tax in another state. The credit is claimed in the same manner as claimed by a full-year resident, but only for that portion of the year that the nonresident taxpayer was living in Utah. A schedule of income taxed in more than one state, apportioning income between resident and nonresident status, must be attached to the part-year resident return.

D. For only those states in which a resident professional athlete has participated in his team's composite return or simplified withholding, a resident professional athlete may claim the credit provided in Section 59-10-106 by:

1. filing a resident Utah return showing the computation of tax based on total income before any credit for taxes in another state; and

2. attaching a summary, prepared by the team or the team's authorized representative, indicating both the amount of the athlete's income allocated to all other states in which the athlete has participated in his team's composite return or simplified withholding, and the amount of income tax paid by the athlete to those states.

E. The credit allowable on the Utah return for taxes paid to any other state shall be the smaller of the following:

1. the amount of tax paid to the other state; or

2. a percentage of the total Utah tax. This percentage is determined by dividing the total federal adjusted gross income into the amount of the federal adjusted gross income taxed in the other state.

R865-9I-4. Equitable Adjustments Pursuant to Utah Code Ann. Section 59-10-115.

A. Every taxpayer shall report and the Tax Commission shall make or allow such adjustments to the taxpayer's state taxable income as are necessary to prevent the inclusion or deduction for a second time on his Utah income tax return of items involved in determining his federal taxable income. Such adjustments shall be made or allowed in an equitable manner as defined in Utah Code Ann. 59-10-115 or as determined by the Tax Commission consistent with provisions of the Individual Income Tax Act.

B. In computing the Utah portion of a nonresident's federal adjusted gross income; any capital losses, net long-term capital gains, and net operating losses shall be included only to the extent that these items were not taken into account in computing the taxable income of the taxpayer for state income tax purposes for any taxable year prior to January 2, 1973.

R865-9I-6. Returns by Husband and Wife When One is a Resident and the Other is a Nonresident Pursuant to Utah Code Ann. Section 59-10-119.

A. Except as provided in B., a husband and wife, one being a nonresident and the other a resident, who file a joint federal income tax return, but separate state income tax returns shall determine their separate state taxable income as follows:

1. First, the amount of the total federal adjusted gross income ("FAGI") pertaining to each spouse shall be determined. Any adjustments that apply to both spouses shall be divided between the spouses in proportion to the respective incomes of

the spouses.

2. Next, each spouse is allocated a portion of each deduction and add back item.

a) To determine this allocation, each spouse shall:

(1) divide his or her own FAGI by the combined FAGI of both spouses and round the resulting percentage to four decimal places; and

(2) multiply the resulting percentage by the deductions and add back items.

b) The deductions and add back items allowed are as follows:

(1) state income tax deducted as an itemized deduction on federal Schedule A;

(2) other items that must be added back to FAGI on the state income tax return;

(3) itemized or standard deduction;

(4) state exemption for dependents;

(5) one-half of the federal tax liability;

(6) state income tax refund included on line 10 of the federal income tax return; and

(7) other state deductions.

3. Each spouse shall claim his or her full state personal exemption.

4. Each spouse shall determine his or her separate tax using the Utah tax rate schedules applicable to a husband and wife filing separate returns.

B. A husband and wife, one being a nonresident and the other a resident, may use an alternate method of calculating their separate state taxable incomes than the method provided in A. if they can demonstrate to the satisfaction of the Tax Commission that the alternate method more accurately reflects their separate state taxable incomes.

R865-9I-7. Change of Status As Resident or Nonresident Pursuant to Utah Code Ann. Section 59-10-120.

A. Definitions:

1. "Part-year resident" means an individual that changes status during the taxable year from resident to nonresident or from nonresident to resident.

2. "FAGI" means federal adjusted gross income.

B. The state taxable income of a part-year resident shall be a percentage of the amount that would have been state taxable income if the taxpayer had been a full-year resident as determined under Utah Code Ann. Section 59-10-112 of the act. This percentage is the Utah portion of FAGI divided by the total FAGI, not to exceed 100 percent.

C. The Utah portion of a part-year resident's FAGI shall be determined as follows:

1. Income from wages, salaries, tips and other compensation earned while in a resident status and included in the total FAGI shall be included in the Utah portion of the FAGI;

2. Dividends actually or constructively received while in resident status shall be included in the Utah portion of FAGI. Any dividend exclusion shall be deducted from the Utah portion of FAGI using the percentage of excludable dividends received while in resident status, compared to the total excludable dividends.

3. All interest actually or constructively received while in resident status shall be included in the Utah portion of the FAGI.

4. All FAGI derived from Utah sources while in a nonresident status, as determined under Rule R865-9I-5, shall be included in the Utah portion of FAGI.

D. Income or loss from businesses, rents, royalties, partnerships, estates or trusts, small business corporations as defined by Internal Revenue Code Section 1371(b), and farming shall be included in the Utah portion of FAGI:

1. if the activities involved were concluded, or the taxpayer's connection with them terminated before or at the time of change from resident to nonresident status; or

2. if the activities were commenced or the taxpayer joined them at the time or after the change from nonresident to resident status.

Otherwise, such income or loss shall be included in the Utah portion of FAGI only to the extent derived from Utah sources as determined under Rule R865-9I-5.

E. Moving expenses deducted on the federal return may be deducted from the Utah portion of FAGI only to the extent that they are for moving into Utah and within Utah.

F. Employee business expenses may be deducted from the Utah portion of FAGI only to the extent that they pertain to the production of income included in the Utah portion of FAGI.

G. Payments by a self-employed person to a retirement plan that reduce the total FAGI may be deducted from the Utah portion of FAGI in the same proportion that the related self-employment income is included in the Utah portion of FAGI.

H. Other income, losses or adjustments applicable in determining total FAGI may be allowed or included in the Utah portion of his FAGI only when the allowance or inclusion is fair, equitable, and would be consistent with other requirements of the act or these rules as determined by the Tax Commission.

R865-9I-8. Proration When Two Returns Are Required Pursuant to Utah Code Ann. Section 59-10-121.

A. Two returns are not required when an individual changes status as resident or nonresident. Ordinarily, the total of the taxable income that would be reported on two returns will be included in one return.

B. Only in unusual circumstances as determined by the Tax Commission will the preparation of two returns be allowed or required. In this event, the returns shall be prepared in a fair and equitable manner as approved or prescribed by the Tax Commission consistent with Utah Code Ann. Section 59-10-121 and other pertinent provisions.

R865-9I-9. Taxable Year Pursuant to Utah Code Ann. Section 59-10-122.

A. If a taxpayer's taxable year is changed to a taxable period of less than 12 months as required by Utah Code Ann. Section 59-10-122 and if he is required to convert his income for the period to an annual basis for federal income tax purposes, the taxpayer shall convert his income for the period of less than a year to an annual basis for computing his state income tax.

B. Unless the Tax Commission determines a different method consistent with requirements of the act is necessary or appropriate, the income tax of the taxpayer for the period of less

than 12 months shall be computed as follows:

1. determine the state taxable income applicable to the fractional part of the year and multiply this amount by 12;

2. divide the product by the number of months in the period to arrive at the state taxable income on an annualized basis;

3. compute the tax applicable to the state taxable income as annualized;

4. divide the tax as computed on the annualized state taxable income by 12; and

5. multiply the result by the number of months in the period involved.

R865-9I-10. Adjustments Between Taxable Years After Change in Accounting Methods Pursuant to Utah Code Ann. Section 59-10-124.

A. If a taxpayer's state taxable income for any taxable year is computed under a method of accounting different from the method under which such income was computed for the previous year, the taxpayer shall attach a statement to his return setting forth all differences. This statement shall specify the amounts duplicated or omitted in full or in part as a result of such change. The Tax Commission shall make or allow any necessary adjustments to prevent double inclusion or exclusion of an item of gross income, or double allowance or disallowance of an item of deduction or credit.

R865-9I-11. Share of A Nonresident Estate or Trust, or Its Beneficiaries In State Taxable Income Pursuant to Utah Code Ann. Section 59-10-207.

A. In determining the respective shares of the beneficiaries and of the estate or trust referred to in Utah Code Ann. Section 59-10-207, consideration shall be given to the net amount of the modifications described in Utah Code Ann. Sections 59-10-114 and 59-10-115. This is particularly true for those that relate to items of income, gain, loss, and deduction and that also enter into the definition of distributable net income. Otherwise, any methods different from those prescribed in Utah Code Ann. Section 59-10-207 of the act shall be used only if approved or directed by the Tax Commission as being necessary to prevent a substantial inequity in the allocation of such shares.

R865-9I-12. Fiduciary Adjustment Pursuant to Utah Code Ann. Section 59-10-210.

A. The net amount of the modifications described in Utah Code Ann. Sections 59-10-114 and 59-10-115 that relate to items of income or deduction of an estate or trust may be determined and used as the fiduciary adjustment. Otherwise, any methods different from those prescribed in Utah Code Ann. Section 59-10-210 shall be used only if approved or directed by the Tax Commission as being more appropriate and equitable in specific cases.

R865-9I-13. Nonresident's Share of Partnership or Limited Liability Company Income Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, 59-10-118, and 59-10-303.

A. Nonresident partners and nonresident members shall keep adequate records to substantiate their determination or to permit a determination by the Tax Commission of the part of their adjusted gross income that was derived from or connected with sources in this state.

B. Partnerships and limited liability companies may file form TC-65, Utah Partnership/Limited Liability Company Return of Income, as a composite return on behalf of nonresident partners or nonresident members that meet all of the following conditions:

1. Nonresident partners or nonresident members included on the return may not have other income from Utah sources. Resident partners and resident members may not be included on the composite return.

2. A schedule shall be included with the return listing all nonresident partners or nonresident members included in the composite filing. The schedule shall list all of the following information for each nonresident partner or nonresident member:

a) name;

b) address;

c) social security number;

d) percentage of partnership or limited liability company income;

e) Utah income attributable to that partner or member.

3. Nonresident partners or nonresident members that are entitled to mineral production tax withholding credits, agricultural off-highway gas tax credits, or other Utah credits, may not be included in a composite filing, but must file form TC-40NR, Nonresident or Part-year Resident Form Individual Income Tax Return.

C. The tax due on the composite return shall be computed as follows:

1. A deduction equal to 15 percent of the Utah taxable income attributable to nonresident partners or nonresident members included in the composite filing shall be allowed in place of a standard deduction, itemized deductions, personal exemptions, federal tax determined for the same period, or any other deductions.

2. The tax shall be computed using the maximum tax rate applied to Utah taxable income attributable to Utah sources.

D. The partnership's or limited liability company's federal identification number shall be used on the form TC-65 in place of a social security number.

R865-9I-14. Requirement of Withholding Pursuant to Utah Code Ann. Sections 59-10-401, 59-10-402, and 59-10-403.

A. Except as otherwise provided in statute or this rule, every employer shall withhold Utah income taxes from all wages paid:

1. to a nonresident employee for services performed within Utah,

2. to a resident employee for all services performed, even though such services may be performed partially or wholly without the state.

B. If the services performed by a resident employee are performed in another state of the United States, the District of Columbia, or a possession of the United States that requires withholding on wages earned, the withholding tax for Utah shall be the Utah tax required to be withheld less the tax required to be withheld under the laws, rules, and regulations of that other state, District of Columbia, or possession of the United States.

C. If the duties of a nonresident employee involve work both within and without the state, tax is withheld from that portion of the total wages that is properly allocable to Utah. The method of allocation is subject to review by the Tax Commission and may be subject to change if it is determined to be improper.

D. Income tax treatment of rail carrier and motor carrier employees is governed by 49 U.S.C. Section 14503.

E. Withholding required under Section 59-10-402 is required for all wages that are:

1. subject to withholding for federal income tax purposes;

2. paid to individuals who are deemed employees as determined by the Tax Commission, using Internal Revenue Service guidelines.

F. The number of exemptions claimed for federal withholding shall be the number of exemptions claimed for state withholding purposes.

G. Employers should use Utah income tax withholding schedules or tables published by the Tax Commission in computing the amount of state income tax withheld from their employees.

R865-9I-15. Employees Incurring No Income Tax Liability Pursuant to Utah Code Ann. Section 59-10-403.

A. With reference to Utah Code Ann. Section 59-10-403, an employer shall not be required to deduct and withhold Utah income taxes from wages paid to an employee who has filed a Federal Withholding Certificate, Form W-4E.

R865-9I-16. Collection and Payment of Income Tax Pursuant to Utah Code Ann. Section 59-10-406.

A. Forms prescribed by the Tax Commission for the purposes specified in Section 59-10-406 are:

1. Form TC-96A, Utah Employer's Quarterly Income Withholding Return and

2. Form TC-96, Utah Employer's Withholding Tax Annual Reconciliation Return.

B. These forms shall be completed and used in accordance with the instructions provided by the Tax Commission.

C. Legible copies of the federal Form W-2 must show, in addition to the name and address of the payee and payor, the payor's Utah withholding tax account number, the amount of payments made, the amounts of federal and Utah state income tax withheld in each case, the social security number of the payee and such other data as is required by the Tax Commission. The form must carry the word Utah either printed or stamped thereon in such a way as to clearly indicate the tax withheld was for Utah in accordance with the Utah laws, as distinguished from any other state or jurisdiction.

D. Sufficient copies of the W-2 form must be furnished to each taxpayer to enable attachment of a legible copy to the state income tax return.

E. If the employer fails to withhold the tax required under Section 59-10-402, and thereafter, the income subject to withholding is reported and the resulting tax is paid by the recipient, any tax required to be withheld shall not be collected from the employer. However, the employer shall remain subject to penalties and interest on the total amount of taxes that should have been withheld.

R865-9I-17. Time for Filing Withholding Tax Returns and Payment of Withholding Taxes Pursuant to Utah Code Ann. Sections 59-10-406 and 59-10- 407.

A. This rule provides exceptions to the statutory requirement that an employer shall file withholding tax returns and pay withholding taxes quarterly.

B. An employer may elect to file withholding tax returns and pay withholding taxes on an annual basis for a calendar year in which the employer:

1. files a federal Schedule H; or

2. withholds less than $1,000.

C. The annual withholding return and payment under B. are due by January 31 of the year succeeding the year for which the payment and return apply.

D. An employer withholding an average of $1,000 or more per month shall file withholding tax returns and pay withholding taxes on a monthly basis.

E. The monthly withholding return and payment under D. are due as prescribed in Section 59-10-407.

R865-9I-18. Taxpayer Records, Statements, and Special Returns Pursuant to Utah Code Ann. Section 59-10-501.

A. Every taxpayer shall keep adequate records for income tax purposes of a type which clearly reflect income and expense, gain or loss, and all transactions necessary in the conduct of business activities.

B. Records of all transactions affecting income or expense, or gain or loss, and of all transactions for which deductions may be claimed, should be preserved by the taxpayer to enable preparation of returns correctly and to substantiate claims. All such records shall be made available to an authorized agent of the Tax Commission when requested, for review or audit.

R865-9I-19. Returns By Husband and Wife Pursuant to Utah Code Ann. Section 59-10-503.

A. In the year a married person dies, the surviving spouse may file a joint Utah return if a joint federal return was filed except in cases where one spouse was a resident and the other a nonresident. In these cases, separate returns may be required (see Utah Code Ann. Section 59-10-503(b) and Rule R865-9I-6).

R865-9I-20. Returns Made By Fiduciaries and Receivers Pursuant to Utah Code Ann. Section 59-10-504.

A. Returns by fiduciaries and receivers shall be made in accordance with forms and instructions provided by the Tax Commission. The fiduciary of any resident estate or trust or of any nonresident estate or trust having income derived from Utah sources and who is required to make a return for federal income tax purposes shall make and file a corresponding return for state income tax purposes.

1. Each return shall include a listing of the beneficiaries and their distributable shares of the state taxable income.

2. In the case of a nonresident estate or trust, the return shall include detailed information showing how the amount of income derived from or connected with Utah sources was determined.

B. The fiduciary is required to pay the taxes on the income taxable to the estate or trust. Liability for payment of the tax

attaches to the executor or administrator up to his discharge. If the executor or administrator failed to file a return as required by law or failed to exercise due diligence in determining and satisfying the tax liability, the liability is not extinguished until the return is filed and paid.

C. Liability for the tax also follows the estate itself. If by reason of the distribution of the estate and the discharge of the executor or administrator, it appears that collection of tax cannot be made from the executor or administrator, each legatee or distributee must account for his proportionate share of the tax due and unpaid to the extent of the distributive share received by him.

R865-9I-21. Return By Partnership Pursuant to Utah Code Ann. Section 59-10-507.

A. Every partnership having a resident partner or having any income derived from sources in this state (determined in accordance with Utah Code Ann. Section 59-10-303 and Rule R865-9I-13) shall file a return in accordance with forms and instructions provided by the Tax Commission.

B. If the partnership has income derived from or connected with sources both inside and outside Utah and if any partner was not a resident of Utah, the portion derived from or connected with sources in this state must be determined and shown.

1. They must be determined and shown for each item of the partnership's, and each nonresident partner's, distributive shares of income, credits, deductions, etc., shown on Schedules K and K-1 of the federal return.

2. The Utah portion may be shown alongside the total for each item on the federal schedules K and K-1, or they may be shown on an attachment to the Utah return.

R865-9I-22. Signing of Returns and Other Documents Pursuant to Utah Code Ann. Section 59-10-512.

A. Any return, statement, or other document shall be signed as required by specific provisions of the act or as prescribed by forms or instructions furnished by the Tax Commission.

B. All returns filed with the Tax Commission must be signed by the taxpayer or his duly authorized agent as provided by law. Unsigned returns are not valid returns for income tax purposes and if unsigned, the benefits of proper filing may be denied the taxpayer.

C. Returns may be filed on forms prescribed and furnished by the Tax Commission, or in lieu thereof, on reproduced or facsimile copies, provided that the same information required on the printed form for the same year is provided and the paper used for such substitute return is equal in durability and weight to 20 lb. bond. Paper more brittle or lighter in weight than that specified is not acceptable as a replacement for the regular reporting forms. The use of paper of lesser quality for supporting schedules is permitted, providing the schedules are clear and legible.

R865-9I-23. Extension of Time to File Returns Pursuant to Utah Code Ann. Section 59-10-516.

A. A completed form TC-546, Prepayment of Income Tax, must accompany the prepayment amount required by Section 59-10-516, if the prepayment is not in the form of withholding, payments applied from previous year refunds, or credit carryforwards.

B. Interest shall be charged on any additional tax due shown on the return in accordance with Section 59-1-402. Interest is calculated from the original due date of the return to the date the tax is paid and applies even when an extension of time to file the return exists.

C. Utah residents in military service, stationed outside the United States, shall be granted an extension of time to file to the 15th day of the fourth month after their return to the United States, or their discharge date, whichever is earlier.

R865-9I-24. Timely Mailing Treated As Timely Filing Pursuant to Utah Code Ann. Section 59-10-517.

A. With reference to Section 59-10-517(3)(b), the provisions of that statute that apply to registered mail shall also apply in ordinary circumstances to certified mail.

R865-9I-26. Petition For Redetermination of a Deficiency Pursuant to Utah Code Ann. Section 59-10-533.

A. A petition for redetermination of a deficiency shall be in letter form, and in accordance with the requirements of Utah Code Ann. Section 59-1-501, and effective January 1, 1988 shall conform with the Administrative Procedures Act.

R865-9I-27. Redetermination of Tax Deficiency by Tax Commission Pursuant to Utah Code Ann. Section 59-10-525.

A. If a taxpayer disagrees or has questions about a notice of deficiency, he may arrange to discuss these issues with officials of the Audit Division of the Tax Commission. This must be done prior to filing a petition for determination. The taxpayer may present evidence, legal authority, and argument on an informal basis with a view to reaching a mutual agreement to proper settlement of the case.

B. After a petition for redetermination has been filed, the petitioner shall be granted the opportunity to present evidence, legal authority, and argument in respect to the issues raised by the pleadings. Such presentations shall, under ordinary circumstances, be made initially to designated officials of the Audit Division of the Tax Commission with a view to resolving the case or at least to clearly define the areas of disagreement. If the case is not resolved in this way, and if the petitioner requests, a hearing may be granted before the Tax Commission to present evidence, legal authority and argument regarding the areas of disagreement. After such a hearing, the Tax Commission shall promptly notify the petitioner of its decision as prescribed in Utah Code Ann. Title 59, Chapter 1.

R865-9I-28. Petition For Redetermination of Tax Commission Action On Claim For Refund Pursuant to Utah Code Ann. Section 59-10-533.

A. A petition for redetermination of Tax Commission action on a claim for refund shall be in letter form. In addition to the requirements of Utah Code Ann. Title 59, Chapter 1, the claim shall cite the law or rules upon which petitioner relies as a basis for the claim. It must be supported by documentary evidence to substantiate any facts upon which petitioner relies to support all claims if the burden of proof is upon the taxpayer as provided in Utah Code Ann. Section 59-10-543.

B. Any response to the Tax Commission's answer to the petition must be filed by mail, in letter form, within 15 days of receipt of the answer.

R865-9I-29. Action of Tax Commission on Redetermination Claim For Refund Pursuant to Utah Code Ann. Section 59-10-535.

A. With reference to Utah Code Ann. Section 59-10-535, if a taxpayer disagrees with Tax Commission action on a claim for refund, he shall be given the opportunity to present evidence, legal authority, and argument in accordance with the same procedures prescribed by Rule R865-9I-27 relative to redetermination of deficiencies.

R865-9I-30. Limitations on Assessment and Collection Pursuant to Utah Code Ann. Section 59-10-536.

A. If a taxpayer elects to defer a determination as to applicability of the presumption that the activity is being engaged in for profit as set forth in I.R.C. Section 183(d), he shall notify the Tax Commission in writing of such election. He must also consent to assessment of tax pertaining to such activity at any time within the five- or seven-year period plus a reasonable additional period.

1. In addition, the taxpayer shall immediately furnish to the Tax Commission a copy of every waiver of the running of the statute of limitations that he may give to the Internal Revenue Service, and he shall at the same time give his consent in writing that the waiver shall also apply to the time allowed for assessment of tax by the Tax Commission.

2. The taxpayer must notify the Tax Commission of any audit actions or determinations made by the Internal Revenue Service with respect to such activity.

R865-9I-32. Confidentiality of Return Information, Penalties, and Exchange of Information With The Internal Revenue Service or Governmental Units Pursuant to Utah Code Ann. Section 59-10-545.

A. The amount of income and other particulars disclosed by a taxpayer on his return or report required under the act is strictly confidential and except in accordance with proper judicial order, or as otherwise provided by law, may not be divulged.

B. A taxpayer, properly identified, may inspect his own return. He may also authorize to the satisfaction of the Tax Commission, an agent to represent him and inspect his returns. Such authorization must be in writing and may be limited or of a continuing nature as specified. A fee may be charged for furnishing copies of returns or reports by the Tax Commission.

C. Officers of the United States Internal Revenue Service, upon being properly identified as such, may be granted permission to inspect the returns or reports on file under this chapter for the purpose of administering the federal tax law. All information, so obtained, must be used in the strictest confidence for tax administration only.

R865-9I-33. Reporting Miscellaneous Income Pursuant to Utah Code Ann. Section 59-10-501.

A. Legible copies of the federal Form 1099 or other special forms for reporting rents, royalties, interest, remuneration, etc., from Utah sources not subject to federal withholding must be open to inspection and gathering of information by authorized representatives of the Tax Commission or submitted to the Tax Commission upon request. These forms must show the name, address, social security number, and other pertinent information pertaining to each taxpayer, resident or nonresident of Utah, the amount and purpose of the distribution clearly shown.

R865-9I-34. Property Tax Relief For Individuals Pursuant to Utah Code Ann. Sections 59-2-1201 through 59-2-1220 and 59-2-1104 through 59-2-1109.

A. Where the claimant pays property taxes on a mobile home and pays rent on the land on which the home is situated, two computations must be made and the results combined. One computation is made for taxes paid on the mobile home, and the other is made for the rental of the land. The rental may not include charges for any utilities, services, furniture, furnishings or personal appliances furnished by the landlord as a part of the rental agreement.

B. "Property taxes accrued" does not mean that taxes can be accumulated for two or more years and then claimed in one year.

C. Claims for rent paid for taxes will not be allowed in any year in which a claim is made for taxes, except in the case of mobile homes where both taxes and rent are paid.

D. Every claimant shall supply the Tax Commission a statement that the property taxes accrued and used have been or will be paid by him and that there are no delinquent property taxes on the homestead.

E. State welfare assistance is not considered as public funds for the payment of rent, and will not preclude a rebate. However, assistance payments must be included in income.

F. Where housing assistance payments are involved under the Housing and Community Development Act, Title II, Section 8:

1. only that portion of the rent paid by the tenant may be claimed under the terms of the Circuit Breaker Act; and

2. that portion of the rent paid by the federal government to the landlord will not be considered as part of the household income since it is not subject to a claim for rebate.

G. Persons claiming exemption under the provision of the laws for indigents, veterans or blind persons are not precluded from claiming a refund or rebate under Utah Code Ann. Sections 59-2-1204, 59-2-1205 and 59-2-1208. Exemption refunds and rebates are subject to the limitations imposed by Utah Code Ann. Title 59, Chapter 2.

R865-9I-37. Enterprise Zone Individual Income Tax Credits Pursuant to Utah Code Ann. Sections 9-2-401 through 9-2-414.

A. Definitions:

1. "Business engaged in retail trade" means a business that makes a retail sale as defined in Section 59-12-102.

2. "Construction work" does not include facility maintenance or repair work.

3. "Employee" means a person who qualifies as an employee under Internal Revenue Service Regulation 26 CFR 31.3401(c)(1).

4. "Public utilities business" means a public utility under Section 54-2-1.

5. "Qualifying investment" does not include an investment made by a member of a unitary group in plant, equipment, or other depreciable property of another member of that unitary group.

6. "Transfer" pursuant to Section 9-2-411, means the relocation of assets and operations of a business, including personnel, plant, property, and equipment.

7. "Unitary group" is as defined in Section 59-7-101.

B. For purposes of the investment tax credit, an investment is a qualifying investment if:

1. The plant, equipment, or other depreciable property for which the credit is taken is located within the boundaries of the enterprise zone.

2. The plant, equipment, or other depreciable property for which the investment tax credit is taken is in a business that is operational within the enterprise zone.

C. The calculation of the number of full-time positions for purposes of the credits allowed under Section 9-2-413(1)(a) through (d) shall be based on the average number of employees reported to the Department of Workforce Services for the four quarters prior to the area's designation as an enterprise zone.

D. To determine whether at least 51 percent of the business firm's employees reside in the county in which the enterprise zone is located, the business firm shall consider every employee reported to the Department of Workforce Services for the tax year for which an enterprise zone credit is sought.

E. A business firm that conducts non-retail operations and is engaged in retail trade qualifies for the credits under Section 9-2-413 if the retail trade operations constitute a de minimis portion of the business firm's total operations.

F. An employee whose duties include both non-construction work and construction work does not perform a construction job if the construction work performed by the employee constitutes a de minimis portion of the employee?s total duties.

G. Records and supporting documentation shall be maintained for three years after the date any returns are filed to support the credits taken. For example: If credits are originally taken in 1988 and unused portions are carried forward to 1992, records to support the original credits taken in 1988 must be maintained for three years after the date the 1992 return is filed.

H. If an enterprise zone designation is revoked prior to the expiration of the period for which it was designated, only tax credits earned prior to the loss of that designation will be allowed.

R865-9I-38. Pensions and Annuities Pursuant to Utah Code Ann. Section 59-10-114.

A. Amounts received by taxpayers from pension or annuity plans described in Section 59-10-114 are not retirement income for purposes of that section if:

1. The amounts received are subject to the penalty or additional tax imposed by I.R.C. sections 72(q) and (t); or

2. The amounts are not subject to the penalty or additional taxes imposed by I.R.C. Sections 72(q) and (t) because they are a return of previously taxed contributions; or

3. The amounts received are due to termination of employment before reaching a normal retirement age as established under the qualifying plan.

R865-9I-39. Subtraction from Federal Taxable Income for a Handicapped Child or Adult Pursuant to Utah Code Ann. Section 59-10-114.

A. The subtraction from income for handicapped children and handicapped adults allowed under Section 59-10-114 must be accompanied, for each year claimed, by the Disabled Exemption Verification, form TC-40D.

R865-9I-41. Historic Preservation Tax Credits Pursuant to Utah Code Ann. Section 59-10-108.5.

A. Definitions

1. "Qualified rehabilitation expenditures" includes architectural, engineering, and permit fees.

2. "Qualified rehabilitation expenditures" does not include movable furnishings.

3. "Residential" as used in Section 59-10-108.5 applies only to the use of the building after the project is completed.

B. Taxpayers shall file an application for approval of all proposed rehabilitation work with the Division of State History prior to the completion of restoration or rehabilitation work on the project. The application shall be on a form provided by the Division of State History.

C. Rehabilitation work must receive a unique certification number from the State Historic Preservation Office in order to be eligible for the tax credit.

D. In order to receive final certification and be issued a unique certification number for the project, the following conditions must be satisfied:

1. The project approved under B. must be completed.

2. Upon completion of the project, taxpayers shall notify the State Historic Preservation Office and provide that office an opportunity to review, examine, and audit the project. In order to be certified, a project shall be completed in accordance with the approved plan and the Secretary of the Interior's Standards for Rehabilitation.

3. Taxpayers restoring buildings not already listed on the National Register of Historic Places shall submit a complete National Register Nomination Form. If the nomination meets National Register criteria, the State Historic Preservation Office shall approve the nomination.

4. Projects must be completed, and the $10,000 expenditure threshold required by Section 59-10-108.5 must be met, within 36 months of the approval received pursuant to B.

5. During the course of the project and for three years thereafter, all work done on the building shall comply with the Secretary of the Interior's standards for Rehabilitation.

E. Proof of State Historic Preservation Office certification shall be made by:

1. receiving an authorization form from the State Historic Preservation Office containing the certification number;

2. attaching that authorization form to the tax return for the year in which the credit is claimed.

F. Credit amounts shall be applied against Utah individual income tax due in the tax year in which the project receives final certification under D.

G. Credit amounts greater than the amount of Utah

individual income tax due in a tax year shall be carried forward to the extent provided by Section 59-10-108.5.

H. Carryforward historic preservation tax credits shall be applied against Utah individual income tax due before the application of any historic preservation credits earned in the current year and on a first-earned, first-used basis.

I. Original records supporting the credit claimed must be maintained for three years following the date the return was filed claiming the credit.

R865-9I-42. Order of Credits Applied Against Utah Individual Income Tax Due Pursuant to Utah Code Ann. Sections 9-2-413, 59-6- 102, 59-13-202, and Title 59, Chapter 10.

A. Taxpayers shall deduct credits authorized by Sections 9-2- 413, 59-6-102, 59-13-202, and Title 59, Chapter 10 against Utah individual income tax due in the following order:

1. nonrefundable credits;
2. nonrefundable credits with a carryforward;
3. refundable credits.

R865-9I-44. Compensation Received by Nonresident Professional Athletes Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, and 59-10-118.

A. The Utah source income of a nonresident individual who is a member of a professional athletic team includes that portion of the individual's total compensation for services rendered as a member of a professional athletic team during the taxable year which, the number of duty days spent within the state rendering services for the team in any manner during the taxable year, bears to the total number of duty days spent both within and without the state during the taxable year.

B. Travel days that do not involve either a game, practice, team meeting, promotional caravan or other similar team event are not considered duty days spent in the state, but shall be considered duty days spent within and without the state.

C. Definitions.

1. "Professional athletic team" includes any professional baseball, basketball, football, soccer, or hockey team.

2. "Member of a professional athletic team" shall include those employees who are active players, players on the disabled list, and any other persons required to travel and who do travel with and perform services on behalf of a professional athletic team on a regular basis. This includes coaches, managers, and trainers.

3. "Duty days" means all days during the taxable year from the beginning of the professional athletic team's official preseason training period through the last game in which the team competes or is scheduled to compete.

a) Duty days shall also include days on which a member of a professional athletic team renders a service for a team on a date that does not fall within the period described in 3., for example, participation in instructional leagues, the Pro Bowl, or other promotional caravans. Rendering a service includes conducting training and rehabilitation activities, but only if conducted at the facilities of the team.

b) Included within duty days shall be game days, practice days, days spent at team meetings, promotional caravans, and preseason training camps, and days served with the team through all postseason games in which the team competes or is scheduled to compete.

c) Duty days for any person who joins a team during the season shall begin on the day that person joins the team, and for a person who leaves a team shall end on the day that person leaves the team. If a person switches teams during a taxable year, a separate duty day calculation shall be made for the period that person was with each team.

d) Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when the member of a professional athletic team has been suspended without pay and prohibited from performing any services for the team, shall not be treated as duty days.

e) Days for which a member of a professional athletic team is on the disabled list shall be presumed not to be duty days spent in the state. They shall, however, be included in total duty days spent within and without the state.

4. "Total compensation for services rendered as a member of a professional athletic team" means the total compensation received during the taxable year for services rendered:

a) from the beginning of the official preseason training period through the last game in which the team competes or is scheduled to compete during that taxable year; and

b) during the taxable year on a date that does not fall within the period in 4.a), for example, participation in instructional leagues, the Pro Bowl, or promotional caravans.

5. "Total compensation" includes salaries, wages, bonuses, and any other type of compensation paid during the taxable year to a member of a professional athletic team for services performed in that year.

a) Total compensation shall not include strike benefits, severance pay, termination pay, contract or option-year buyout payments, expansion or relocation payments, or any other payments not related to services rendered to the team.

b) For purposes of this rule, "bonuses" subject to the allocation procedures described in A. are:

(1) bonuses earned as a result of play during the season, including performance bonuses, bonuses paid for championship, playoff or bowl games played by a team, or for selection to all-star league or other honorary positions; and

(2) bonuses paid for signing a contract, unless all of the following conditions are met:

(a) the payment of the signing bonus is not conditional upon the signee playing any games for the team, or performing any subsequent services for the team, or even making the team;

(b) the signing bonus is payable separately from the salary and any other compensation; and

c) the signing bonus is nonrefundable.

D. The purpose of this rule is to apportion to the state, in a fair and equitable manner, a nonresident member of a professional athletic team's total compensation for services rendered as a member of a professional athletic team. It is presumed that application of the provisions of this rule will result in a fair and equitable apportionment of that compensation. Where it is demonstrated that the method provided under this rule does not fairly and equitably apportion that compensation, the commission may require the member of a professional athletic team to apportion that compensation

under a method the commission prescribes, as long as the prescribed method results in a fair and equitable apportionment.

1. If a nonresident member of a professional athletic team demonstrates that the method provided under this rule does not fairly and equitably apportion compensation, that member may submit a proposal for an alternative method to apportion compensation. If approved, the proposed method must be fully explained in the nonresident member of a professional athletic team's nonresident personal income tax return for the state.

E. Nonresident professional athletes shall keep adequate records to substantiate their determination or to permit a determination by the Tax Commission of the part of their adjusted gross income that was derived from or connected with sources in this state.

F. Professional athletic teams shall file a composite return, on a form prescribed by the commission, on behalf of nonresident professional athletes that meet all of the following conditions.

1. Nonresident professional athletes included on the return may not have other income from Utah sources. Resident professional athletes may not be included on a composite return.

2. A schedule shall be included with the return, listing all nonresident professional athletes included in the composite filing. The schedule shall list all of the following information for each nonresident professional athlete:

a) name;

b) address;

c) social security number;

d) Utah income attributable to that nonresident professional athlete.

3. Nonresident professional athletes that are entitled to mineral production tax withholding credits, agricultural off-highway gas tax credits, or other Utah credits, may not be included in a composite filing, but must file form TC-40NR, Non or Part-year Resident Individual Income Tax Return.

4. Participating team members must acknowledge through their election that the composite return constitutes an irrevocable filing and that they may not file an individual income tax return in the taxing state for that year.

G. The tax due on the composite return shall be computed as follows.

1. A deduction equal to 15 percent of the Utah taxable income attributable to nonresident professional athletes included in the composite filing shall be allowed in place of a standard deduction, itemized deductions, personal exemptions, federal tax determined for the same period, or any other deductions.

2. The tax shall be computed using the maximum tax rate applied to Utah taxable income attributable to Utah sources.

H. The professional athletic team's federal identification number shall be used on the composite form in place of a social security number.

I. This rule has retrospective application to January 1, 1995.

R865-9I-46. Medical Savings Account Tax Deduction Pursuant to Utah Code Ann. Sections 31A-32a-106 and 59-10-114.

A. Account administrators required to withhold penalties from withdrawals pursuant to Section 31A-32a-105 shall hold those penalties in trust for the state and shall submit those withheld penalties to the commission along with form TC-97M, Utah Medical Savings Account Reconciliation.

B. In addition to the requirements of A., account administrators shall file a form TC- 675M, Statement of Withholding for Medical Savings Account, with the commission, for each account holder. The TC-675M shall contain the following information for the calendar year:

1. the beginning balance in the account;

2. the amount contributed to the account;

3. the account's earnings;

4. distributions for qualified medical expenses;

5. distributions for non-medical expenses not subject to penalty;

6. distributions for non-medical expenses subject to penalty;

7. the amount of penalty required to be withheld and remitted to the state;

8. the account administrator's administrative fee charged to the account; and

9. the ending balance in the account.

C. The account administrator shall file forms TC-97M and TC-675M with the commission on or before January 31 of the year following the calendar year on which the forms are based.

D. The account administrator shall provide each account holder with a copy of the form TC-675M on or before January 31 of the year following the calendar year on which the TC-675M is based.

E. The account administrator shall maintain original records supporting the amounts listed on the TC-675M for the current year filing and the three previous year filings.

F. Account holders must attach a copy of the TC-675M to their state tax return to qualify for the deduction allowed under Section 59-10-114.

R865-9I-47. Withholding and Payment of Income Tax for Members of the Armed Services Receiving Combat Pay Pursuant to Utah Code Ann. Sections 59-10-408 and 59-10-522.

A. Income excluded from federal adjusted gross income as combat pay shall be exempt from the withholding requirements of Sections 59-10-401 through 59-10-407.

B. Utah residents receiving combat pay qualify for an extension of time to pay income taxes for a period not to exceed the extension for filing returns provided in Tax Commission rule R865-9I-23(C).

R865-9I-48. Adoption Expenses Deduction Pursuant to Utah Code Ann. Section 59-10-114.

A. For purposes of the deduction for adoption expenses under Section 59-10-114, adoption expenses include:

1. medical expenses associated with prenatal care, childbirth, and neonatal care;

2. fees paid to reimburse the state under Section 35A-3-308;

3. fees paid to an attorney or placement service for arranging the adoption;

4. all actual travel costs incurred exclusively for the purpose of completing adoption arrangements; and

5. living expenses of the birth mother if paid by the adoptive parents as part of their adoption expenses and if in conformance with Section 76-7-203.

B. Adoption expenses do not include:

1. food, clothing, or other routine expenses associated with the child's care, other than necessary medical expenses, that arise before the adoption is final;

2. foster care expenses incurred prior to the application for adoption; or

3. legal expenses arising from custody actions subsequent to the finalization of the adoption.

C. Qualified adoption expenses may be deducted regardless of whether the adoption process is terminated.

D. The income tax deduction under Section 59-10-114 applies to the actual qualified adoption expenses of the birth mother, the legal guardian of the birth mother or another individual acting on behalf of the birth mother, or the adoptive parents.

E. Qualified adoption expenses must be deducted in the tax year in which the expenses are paid by the party incurring the expenses.

F. Reimbursed adoption expenses for which a taxpayer has taken the state income tax deduction, must be added to the taxpayer's gross income in the tax year in which the expenses are reimbursed.

R865-9I-49. Higher Education Savings Incentive Program Tax Deduction Pursuant to Utah Code Ann. Sections 53B-8a-112 and 59-10-114.

A. "Trust" means the Utah Educational Savings Plan Trust created pursuant to Section 53B-8a-103.

B. The trustee of the trust shall file a form TC-675H, Statement of Account with the Utah Educational Savings Plan Trust, with the commission, for each trust participant. The TC-675H shall contain the following information for the calendar year:

1. the amount contributed to the trust by the participant;

2. the income earned on the participant's contributions to the trust; and

3. the amount refunded to the participant pursuant to Section 53B-8a-109.

C. The trustee of the trust shall file form TC-675H with the commission on or before January 31 of the year following the calendar year on which the forms are based.

D. The trustee of the trust shall provide each trust participant with a copy of the form TC-675H on or before January 31 of the year following the calendar year on which the TC-675H is based.

E. The trustee of the trust shall maintain original records supporting the amounts listed on the TC-675H for the current year filing and the three previous year filings.

F. Trust participants must attach a copy of the TC-675H to their state tax return to qualify for the deduction allowed under Section 59-10-114.

KEY: historic preservation, income tax, tax returns, enterprise zones
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9-2-401 through 9-2-414 53B-8a-112 59-2-1201 through 59-2-1220 59-2-1104 through 59-2-1109 59-6-102 59-10 59-10-103 59-10-106 59-10-108 through 59-10-122 59-10-124 59-10-127 59-10-128 59-10-129 59-10-130 59-10-207 59-10-210 59-10-303 59-10-401 through 59-10-403 59-10-406 through 59-10-408 59-10-501 59-10-503 59-10-504 59-10-507 59-10-512 59-10-516 59-10-517 59-10-522 59-10-525 59-10-533 59-10-535 59-10-536 59-10-545 59-10-602 59-10-603 59-13-202 59-13-302

R907. Transportation, Administration.
R907-1. Appeal of Departmental Actions.
R907-1-1. General Administrative Procedures.

All applications, Requests for Agency Action, and appeals from Notices of Agency Action shall be processed as informal adjudicative proceedings pursuant to Title 63, Chapter 46b, Utah Administrative Procedures Act (UAPA), unless another rule specifically designates a proceeding as formal. An evidentiary hearing will be held only for formal adjudicative proceedings. However, nothing in this rule is intended to prohibit the person who hears a matter on agency review from holding a meeting of all parties for purposes of settlement, fleshing out of the issues, oral argument, or presentation of evidence. Adjudicative proceedings are subject to agency review pursuant to Utah Code Ann. Section 63-46b-12 only when statute or a rule specifically provides for review. This rule does not apply to employee grievances, personnel actions, or requests for records under the Governmental Records Access and Management Act (GRAMA).

R907-1-2. Commencement by department -- Notice of Agency Action -- Procedures.

(1) An adjudicative proceeding commenced by the department is initiated by the mailing or delivery by personal service of a Notice of Agency Action to the person or persons against whom the action is proposed to be taken (respondents).

(2) A Notice of Agency Action shall include the following information:

(a) the names and mailing addresses of all respondents and any other persons to whom notice is being given;

(b) the department's file number or other reference number;

(c) a name or caption of the adjudicative proceeding, i.e., Utah Department of Transportation, Motor Carrier Safety Division v. XXXX Trucking Company;

(d) the date on which the Notice was placed in U.S. Mail, or personally served upon the respondents;

(e) a statement that the adjudicative proceeding will be conducted informally pursuant to these rules unless either the department or the respondent requests conversion to a formal adjudicative proceeding and the appropriate hearing officer identified in R907-1-3(2) grants the request;

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

(g) the name, title, mailing address, and telephone number of the office initiating the Notice of Agency Action and the appropriate hearing officer;

(h) a general statement of the purpose of the adjudicative proceeding and, to the extent known, the questions to be decided;

(i) if the department is proposing to assess a fine or penalty, the amount of the fine or penalty and a summary of the evidence supporting the proposed amount;

(j) a statement that the respondent is entitled to agency review if he or she files a Request for Agency Review with the initiating division or office within 30 days from the date the Notice is deposited in U.S. Mail or personally served.

(3) Absent filing of a timely request, the department will issue an order that the respondent is in default. If the defaulting party is the sole respondent, the Notice of Agency Action will then become the department's final order. The initiating division, office, or appropriate hearing officer shall revise the Notice of Agency Action to effect this change, captioning the Notice as the Final Order, affixing the appropriate signature the new date. The department may not change the contents in any substantive manner. However, the final order shall include a provision that notifies the respondent of his right to judicial The department shall then either mail or personally serve the respondent with a copy of the default order and the final order.

(4) If the defaulting party is not the sole respondent, the initiating division, office, or the appropriate hearing officer shall mail the Order of Default to all parties. The adjudicative proceeding may continue and the department may determine all issues in the proceeding, including those affecting the defaulting party.

(5) A defaulting party may seek agency review of an Order of Default by appealing to the appropriate hearing officer identified in R907-1-3(2). If the Order of Default was issued by that hearing officer, then the defaulting party must seek reconsideration of the Order of Default pursuant to R907-3-1. The sole issue is whether entering default was appropriate.

(6) UDOT shall:

(a) mail or personally serve the Notice of Agency Action to each party;

(b) publish the Notice of Agency Action if required by statute, any other rule, or the Utah Transportation Commission.

R907-1-3. Commencement by a member of the public -- Complete or Partial Denials of Applications or Requests for Agency Action -- Default.

(1) If the Department decides to deny, either completely or in part, an application or request for agency action and that action is subject to agency review, the division or office making that decision shall send to the applicant a written reply as promptly as possible. The reply should include a brief summary of the reasons for the decision along with a listing of any statutes or rules that were interpreted or relied upon for it, along with UDOT's file or reference number. It shall advise the applicant of his or her right to request agency review by filing a written request with the initiating division or office within 30 days after issuance of the notice. The reply shall constitute the proposed order of the division or office making the decision. If there is no appeal within 30 days, it shall become the final order of the department.

(2) Upon receiving a request for agency review, the division or office shall first review it to determine whether it meets the requirements of Utah Code Ann. Section 63-46b-12(1)(b), i.e., whether it is signed, states the grounds upon which review is requested, the relief sought, and stating the date upon which it was mailed. If the request does not meet the statutory requirements, or was received at the division or office after the 30-day appeals period, it shall be returned to the sender with explanation as to the reason for the return. If the request meets the statutory requirements, the division or office shall promptly forward the material and a copy of any relevant material in its files to:

(a) the State Operations Engineer, if the action involves Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act;

(b) the deputy director, if the action involves Title 72, Chapter 9, Motor Carrier Safety Act;

(c) the Project Development Director or designee, if the matter relates to:

(i) construction contract disputes; or

(ii) construction bids or the Disadvantaged Business Enterprise (DBE) program, in which case, the agency review also constitutes "administrative reconsideration" under federal regulation;

(d) the Region Director, if the action involves something other than the items listed in Subsections (a), (b), or (c), and a specific appellate procedure is not otherwise specified in these rules or in statute;

(e) the executive director or designee, if the action involves something other than the items listed in subsections (a), (b), (c), or (d) and was initiated by Department personnel located at Department headquarters at the Calvin Rampton Complex.

(3) Absent filing of a timely request, the department will issue an order that the respondent is in default. If the defaulting party is the sole respondent, the Request for Agency Action will be dismissed. The department shall either mail a copy of the default order and the dismissal order to the person who requested the action.

(4) If the defaulting party is not the sole requester, the initiating division, office, or the appropriate hearing officer shall mail the Order of Default to all parties. The adjudicative proceeding may continue and the department may determine all issues in the proceeding, including those affecting the defaulting party.

(5) A defaulting party may seek agency review of an Order of Default by appealing to the appropriate hearing officer identified in R907-1-3(2). If the Order of Default was issued by that hearing officer, then the defaulting party must seek reconsideration of the Order of Default pursuant to R907-1-5. The sole issue is whether entering default was appropriate.

R907-1-4. Administrative Appeals -- Procedures.

(1) Upon receiving notice from the division or office of the filing of an appeal either in response to a Notice of Agency Action or a complete or partial denial of an application or Request for Agency Action, the person making the review shall send a letter to the appellant notifying him or her that the appeal has been received and notifying the appellant of the opportunity to submit further documentation in support of the appeal by a date certain. That date should not be less than 10 days nor more than 20 days after the letter is sent.

(2) Discovery is prohibited, but subpoenas may be issued for the production of necessary evidence. Upon request, the applicant shall have access to information contained in the agency's files and to all materials and information gathered in any investigation, except as otherwise provided by law.

(3) Within 20 days after receipt of a request for agency review, any party, including the division or office that issued the original decision, may submit additional documentation, which may include legal briefs, to the person required to decide on review. The person deciding on review may grant either party an extension of time. The decision should be made on the record appearing after the responses have been submitted, but the person deciding on review may meet with the parties, if he considers it necessary. This meeting is not a hearing as contemplated under Title 63, Chapter 46b, Utah Administrative Procedures Act.

(4) The person deciding the review shall issue a final agency order as promptly as possible. The order shall contain:

(a) a designation of the statute or rule permitting or requiring review;

(b) a statement of the issues reviewed;

(c) findings as fact as to each of the issues;

(d) conclusions of law as to each of the issues;

(e) the reasons for the disposition;

(f) whether the decision of the division or office initiating the decision is affirmed, reversed, modified, or remanded;

(g) the right to judicial review pursuant to Utah Code Ann. Section 63-46b-15 by filing a complaint in district court within 30 days.

R907-1-5. Reconsideration.

(1) Within 20 days after issuance of the final order, any party may request reconsideration, stating the specific grounds upon which relief is requested.

(2) The person filing the request shall mail a copy to each party.

(3) The executive director, or his designee, shall issue a written order either denying or granting the request. If no order is issued within 20 days, the request shall be considered denied. If the request is granted in any part and a new final order is issued, it shall include the same information listed in R907-1-4, or R907-1-6 if the matter concerned motor carriers.

R907-1-6. Administrative Procedures for Motor Carrier Actions.

(1) When a motor carrier appeals the imposition of a penalty under Title 72, Chapter 9, Motor Carrier Safety Act, he or she shall follow the procedures established in R907-1. This proceeding is an informal adjudicative proceeding under Title 63, Chapter 46b, Utah Administrative Procedures Act; therefore, discovery is prohibited, but the administrative hearing officer may issue subpoenas or other orders to compel production of necessary evidence. The Department shall provide the applicant, upon request, information in the agency's files, including records that are part of any investigation unless those records are otherwise made confidential or protected from disclosure.

(2) If the proceeding is converted to a formal adjudicative proceeding and an evidentiary hearing held, the Department's deputy director may act as the administrative hearing officer. He may also designate another in his stead. At the hearing, the motor carrier shall go first and is burdened to show why the Department's civil penalties should not be assessed. The division shall respond, with the motor carrier being given an opportunity to rebut the division's evidence. If the administrative hearing officer decides doing so will be beneficial to his understanding of the issues, he may allow closing statement or arguments and he may tape the proceedings. The rules of evidence do not apply.

(3) The person deciding the review shall issue a final agency order as promptly as possible. The order shall contain:

(a) a designation of the statute or rule permitting or requiring review;

(b) a statement of the issues reviewed;

(c) findings as fact as to each of the issues;

(d) conclusions of law as to each of the issues;

(e) the reasons for the disposition;

(f) whether the decision of the division or office initiating the decision is affirmed, reversed, modified, or remanded;

(g) the right to judicial review pursuant to Utah Code Ann. Section 63-46b-15 by filing a complaint in district court within 30 days.

R907-1-6. Formal Process and Hearing: Initiation.

The formal hearing process shall be conducted as follows:

(1) If a timely request for hearing is filed as described in R907-1-5, the Director shall issue a Notice of Agency Action which commences a formal hearing process before the Director in the matter.

(2) Notice of Agency Action, notice of formal hearing. A Notice of Agency Action shall be in writing, signed by the Director, and shall include:

(a) The names and mailing addresses of all respondents and other persons to whom notice is being given by the Director, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the agency;

(i) The file number or other reference number;

(ii) The name of the adjudicative proceeding;

(iii) The date that the Notice of Agency Action was mailed;

(iv) A statement that the adjudicative proceeding is to be conducted formally according to the provisions of these Rules and Sections 63-46b-6 to 63-46b-11;

(v) A statement that a written response must be filed within 30 days of the mailing date of the Notice of Agency Action;

(vi) A statement of the time and place of the hearing, a statement of the purpose for which the hearing is to be held, and a statement that a party who fails to attend or participate in the hearing may be held in default;

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

(viii) The name, title, mailing address, and telephone number of the Director; and

(ix) A statement of the purpose of the adjudicative proceeding and, to the extent known by the Director, the questions to be decided.

(b) The Director shall:

(i) Mail the Notice of Agency Action to each party; and

(ii) Publish the Notice of Agency Action if required by statute or rule.

R907-1-7. Formal Process and Hearing: Responses.

In all formal adjudicative proceedings, the respondent shall file and serve a written response signed by the respondent or a representative within 30 days of the mailing date of the Notice of Agency Action that shall include:

(1) UDOT's file number or other reference number;

(2) The name of the adjudicative proceeding;

(3) A statement of the relief that the respondent seeks;

(4) A statement of the facts; and

(5) A statement summarizing the reasons that the relief requested should be granted.

(6) The response shall be filed with UDOT and one copy shall be sent by mail to each party.

(7) All papers permitted or required to be filed under these rules shall be filed with UDOT and one copy shall be sent by mail to each party.

(8) In the discretion of the Director, any respondent may be heard without written pleadings or an order of default may be entered pursuant to the Rules below.

R907-1-8. Formal Process and Hearing: Default.

The Director may enter an order of default as provided by statute.

R907-1-9. Formal Process and Hearing: Intervention.

(1) Order Granting Leave to Intervene Required. Any person, not a party, desiring to intervene in a formal proceeding shall obtain an order from the Director granting leave to intervene before being allowed to participate. Such order shall be requested by means of a signed, written petition to intervene which shall be filed with UDOT by the time a response is due as prescribed in R907-1-7 and a copy promptly mailed to each party. Any petition to intervene or materials filed after the date a response is due, may be considered by the Director only upon separate motion of the intervenor made at or before the hearing for good cause shown.

(2) Content of Petition. Petitions for leave to intervene must identify the proceedings. The petition must contain a statement of facts demonstrating that the petitioner's legal rights or interest are substantially affected by the formal adjudicative proceeding, or that the petitioner qualifies as an intervenor under any provision of law. Additionally, the petition shall include a statement of the relief, including the basis thereof, that the petitioner seeks from the Director.

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

(4) Granting of Petition. The Director shall grant a petition for intervention if he or she determines that:

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

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

(5) Order Requirements.

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

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

(c) The Director may impose conditions at any time after

the intervention.

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

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

R907-1-10. Formal Process and Hearing: Conduct of Hearings.

All hearings before the Director shall be governed by the following procedures:

(1) Public Hearings. All hearings before the Director shall be open to the public, unless otherwise ordered by the Director for good cause shown. All hearings shall be open to all parties

(2) Full Disclosure. The Director shall regulate the course of the hearing to obtain full disclosure of relevant facts and to afford all the parties a reasonable opportunity to present their positions.

(3) Rules of Evidence. The Director shall use as appropriate guides, the Utah Rules of Evidence insofar as the same may be applicable and not inconsistent with these rules. Notwithstanding this, on its own motion or upon objection of a party, the Director:

(a) May exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(b) Shall exclude evidence privileged in the courts of Utah.

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

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

(4) Hearsay. Notwithstanding subsection C. above, the Director may not exclude evidence solely because it is hearsay.

(5) Parties Rights. The Director shall afford to all parties the opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence.

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

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

(8) Failure to Appear. When a party to a proceeding fails to appear at a hearing after due notice has been given, the Director may enter an order of default in accordance with the Rules described hereinabove.

(9) Time Limits. The Director may set reasonable time limits for the participants of the hearing.

(10) Continuances of the Hearing. Any hearing may be continued to a time and date certain announced at the hearing, which shall not require any new notification. The continuance of the hearing may be made upon motion of a party indicating good cause why such a continuance is necessary and not due to the fault of the party requesting the continuance. The continuance of the hearing may also be made by the request of the Director when in the public interest.

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

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

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

(b) The record of the proceedings may also be made by means of a tape recorder or other recording device if the Director determines that it is unnecessary or impracticable to employ a certified shorthand reporter and the parties do not desire to employ a certified shorthand reporter. Any party, at its own expense, may have a person approved by the Director prepare a transcript of the hearing, subject to any restrictions that the Director is permitted by statute to impose to protect confidential information disclosed at the hearing. Whenever a transcript or tape recording of a hearing is made, it will be made available at the appropriate UDOT office for use of the parties, but may not be withdrawn therefrom.

(13) Preserving Integrity. This section does not preclude the Director from taking appropriate measures necessary to preserve the integrity of the hearing.

(14) Summons, Witness Fees and Discovery. The Director may allow appropriate witness fees as provided by statute or rule.

(a) Summons. The Director may issue a summons or subpoena on its own motion, or upon request of a party, shall issue summons or subpoenas for the attendance of witnesses and the production of any pertinent paper, book, record, document, or other appropriate discovery of evidence.

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

(c) Construction. Nothing in this section restricts or precludes any investigative right or power given to the Transportation Commission or Director by law.

R907-1-11. Formal Process and Hearing: Decisions and Orders.

Decision. The Director shall sign and issue an order that includes:

(1) A statement of the Director's findings of fact,

conclusions of law and decision, based exclusively on the evidence of the record in the adjudicative proceedings or on facts officially noted;

(2) A statement of the reasons for the Director's decision;

(3) A statement of any relief ordered;

(4) A notice of the right to apply for reconsideration;

(5) A notice of any right to administrative or judicial review of the order available to aggrieved parties; and

(6) The time limits applicable to any reconsideration or review.

(7) Preparation of Order. The Director may direct the prevailing party to prepare proposed findings of fact, conclusions of law and an order consistent with the requirements of this rule, which shall be completed within ten days of the direction, unless otherwise instructed by the Director. Copies of the proposed findings of fact, conclusions of law and order shall be served by the prevailing party upon all parties of record prior to being presented by the Director for signature. Notice of objection thereto shall be submitted to the Director and all parties of record within ten days of service.

(8) Entry of Order. The Director shall sign the order and cause the same to be entered and indexed in books kept for that purpose. The order shall be effective on the date of issuance, unless otherwise provided in the order. Upon the petition of a person subject to the order and for good cause shown, the Director may extend the time for compliance fixed in its order.

(9) Evaluation of Evidence. The Director may use his expertise, technical competence, and specialized knowledge to evaluate the evidence.

(10) Hearsay. No finding of fact that was contested may be based solely on hearsay evidence.

(11) Interim Orders. This section does not preclude the Director from issuing interim orders to:

(a) Notify the parties of further hearings;

(b) Notify the parties of provisional rulings on a portion of the issues presented; or

(c) Otherwise provide for the fair and efficient conduct of the adjudicative proceeding.

(12) Notice. The Director shall notify all parties to the proceeding of its decision. A copy of the order with accompanying findings of fact and conclusions of law shall be delivered or mailed to each party.

R907-1-12. Formal Process and Hearing: Reconsideration and Modification of Existing Orders.

(1) Time for Filing. Within 20 days after the date that a final order is issued in the formal adjudicative process, any party may file a written request for reconsideration, rehearing, stating the specific grounds upon which relief is requested.

(2) Not Prerequisite for Judicial Review. Unless otherwise provided by law, the filing of the request for reconsideration is not a prerequisite for seeking judicial review of the order.

(3) Mailing Requirement. The request for reconsideration shall be filed with the Director. One copy shall be sent by mail, within three days of said filing, to each party by the person making the request.

(4) Contents of Petition. A petition for reconsideration shall set forth specifically the particulars in which it is claimed the Director's order or decision is unlawful, unreasonable, or unfair. If the petition is based upon a claim that the Director failed to consider certain evidence, it shall include an abstract of that evidence. If the petition is based upon newly discovered evidence, then the petition shall be accompanied by an affidavit setting forth the nature and extent of such evidence, its relevancy to the issues involved, and a statement that the party could not, with reasonable diligence, have discovered the evidence prior to the hearing.

(5) Response to Petition. All other parties to the proceeding upon which a reconsideration is sought may file a response to the petition no later than ten days from the filing of the petition. A copy of such responses shall be mailed to the petitioner by the person so responding on the date the response is filed.

(6) Action on the Petition. The Director is authorized to act upon the petition for reconsideration. If the Director does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered denied. The Director may, by written order, set a time for hearing on said petition or deny the petition.

(7) Modification of Existing Orders. A request for modification or amendment of an existing order of the Director shall be treated as a new Request for Agency Action for the purposes of these Rules. Such request for modification or amendment shall include as directly affected persons all parties to the previous adjudicative proceeding and their successors in interest.

R907-1-13. Declaratory Rulings.

(1) Petition for Declaratory Orders. Any person may petition the Director for a declaratory order on the applicability of any administrative rule, regulation or order as well as any provision of the Utah Code within the jurisdiction of UDOT, which relate to the operations or activities of that person. The petition shall include the questions and answers sought and reasons in support of or in opposition to the applicability of the statute, rule, regulation or order involved.

(2) Not Subject to Declaratory Rulings. The Director shall not issue a declaratory ruling if:

(a) The person requesting the declaratory ruling participated in an adjudicative proceeding concerning the same issue within 12 months of the date of the present request; or

(b) There would be substantial prejudice to the rights of a person who would be a necessary party unless that person consents in writing to the determination of the matter by a declaratory proceeding.

(3) Intervention. Persons may intervene in declaratory proceedings if they meet the requirements of R907-1-9 hereinabove.

(4) Forms of Rulings. After receipt of a petition for a declaratory order, the Director may issue a written order:

(a) Declaring the applicability of the statute, rule, regulation or order in question to the specified circumstances; or

(b) Decline to issue a declaratory order and state the reasons for its action.

(5) Contents of Order. A declaratory order shall contain:

(a) The names of all parties to the proceeding on which it is based;

(b) The particular facts on which it is based; and

(c) The reasons for its conclusion.

(6) Mailing of Order. A copy of all orders issued in response to a request for a declaratory proceeding shall be mailed promptly to the petitioner and any other parties.

(7) Binding Effect. A declaratory order has the same status and binding effect as any other order issued in an adjudicative proceeding.

(8) Time Limit. Unless the petitioner and the Director agree in writing to an extension, if the Director has not issued a declaratory order within 60 days after receipt of the request for a declaratory order, the petition is denied.

R907-1-14. Emergency Orders.

Emergency orders will be issued in accordance with the following guidelines: notwithstanding the other provisions of these Rules, the Director or any member of the Transportation Commission is authorized to issue an emergency order without notice and hearing in accordance with applicable law. The emergency order shall remain in effect no longer than until the next regular meeting of the Transportation Commission, or such shorter period of time as shall be prescribed by statute.

(1) Prerequisites for Emergency Order. The following must exist to allow an emergency order:

(a) The facts known to the Director or Commission member or presented to the Director or Commission member show that an immediate and significant danger to the public health, safety, or welfare exists; and

(b) The threat requires immediate action by the Director of Commission member.

(2) Limitations. In issuing its Emergency Order, the Director or Commission member shall:

(a) Limit its order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare;

(b) Issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the Director or Commission member's utilization of emergency adjudicative proceedings;

(c) Give immediate notice to the persons who are required to comply with the order; and

(d) If the emergency order issued under this section will result in the continued infringement or impairment of any legal right or interest of any party, the Director shall commence a formal adjudicative proceeding before the Director in accordance with R907-1.

R907-1-15. Exhaustion of Administrative Remedies.

(1) Persons must exhaust their administrative remedies in accordance with Section 63-46b-14, prior to seeking judicial review.

(2) Informal phases as described in these Rules are intended to apply to the uncontested stage of the adjudicative process. No final order is issued in the informal phase if there is a timely objection and request for hearing made. If such a timely objection and request for hearing is made, the matter is treated as a contested case which is processed as a formal proceeding before the Director. Such right to have the matter be contested and processed "formally" is an available and adequate administrative remedy and should be exercised prior to seeking judicial review.

(3) In any formal adjudicative proceeding before the Director, there is an opportunity for affected parties to respond and participate. Only those aggrieved parties that so exhausted these available and adequate remedies before the Director may be allowed to seek judicial review of the final Director action.

R907-1-16. Deadline for Judicial Review.

A party shall file a petition for judicial review of final agency action within 30 days after the date that the order constituting the final agency action is issued. The petition shall name the agency and all other appropriate parties as respondents and shall meet the form requirements specified in Title 63, Chapter 46b.

R907-1-17. Judicial Review of Formal Adjudicative Proceedings.

Judicial review of formal adjudicative proceedings shall be conducted in conformance with Sections 63-46b-16 through 63-46b-18.

R907-1-18. Civil Enforcement.

(1) Agency Action. In addition to other remedies provided by law and other Rules of the Transportation Commission or UDOT, the Commission or UDOT may seek enforcement of an order by seeking civil enforcement in the district courts subject to the following:

(a) The action seeking civil enforcement must name, as defendants, each alleged violator against whom civil enforcement is sought.

(b) Venue for an action seeking civil enforcement shall be determined by the Utah Rules of Civil Procedure.

(c) The action may request, and the court may grant, any of the following:

(i) Declaratory relief;

(ii) temporary or permanent injunctive relief;

(iii) any other civil remedy provided by law; or

(iv) any combination of the foregoing.

(2) Individual Action. Any person whose interests are directly impaired or threatened by the failure of an agency to enforce its order may timely file a complaint seeking civil enforcement of that order. The complaint must name as defendants, the agency whose order is sought to be enforced, the agency that is vested with the power to enforce the order, and each alleged violator against whom the plaintiff seeks civil enforcement. The action may not be commenced:

(a) Until at least 30 days after the plaintiff has given notice of its intent to seek civil enforcement of the alleged violation to the Commission or UDOT, the attorney general, and to each alleged violator against whom the petitioner seeks civil enforcement;

(b) If the Commission or UDOT has filed and is diligently prosecuting a complaint seeking civil enforcement of the same order against the same or similarly situated defendant;

(c) If a petition for judicial review of the same order has been filed and is pending in court.

R907-1-19. Waivers.

Notwithstanding any other provision of these rules, any procedural matter, including any right to notice or hearing, may be waived by the affected person by a signed, written waiver in a form acceptable to UDOT.

R907-1-20. Construction.

The Utah Administrative Procedures Act described in Title 63, Chapter 46b shall supersede any conflicting provision of these Rules. These Rules should be construed to be in compliance with said Act.

KEY: administrative procedure, enforcement (administrative)
February 2, 2002 63-46b-1 through 20
Notice of Continuation January 30, 2002 72-1-102

R907. Transportation, Administration.
R907-3. Administrative Procedure.
R907-3-1. Additional Requirements: Policy.

The Utah Department of Transportation and Transportation Commission shall make available for public inspection, in its office, all its final written orders, decisions, opinions, and statements of general applicability adopted or used.

KEY: administrative procedure
1987 63-46a-3
Notice of Continuation February 6, 2002

R994. Workforce Services, Workforce Information and Payment Services.
R994-403. Claim for Benefits.
R994-403-101a. Timely Filing - General Definition.

The following rules define the procedures for filing new and continued claims or for reopening claims. These rules also determine how the effective date of the new or reopened claim is established as well as circumstances under which a claim may be canceled.

R994-403-102a. Filing a New Claim.

(1) Effective Date of a New Claim.

When a claimant believes he may be entitled to unemployment insurance benefits, it is his responsibility to file a claim during the week he desires to claim the benefits, not after the week has passed. Backdating prior to the week of filing will be allowed only if good cause can be established in accordance with Section R994-403-107a, and Subsections 35A-4-403(1)(a) and 35A-4-406(1)(a). The effective date of the new claim establishes the period of time during which wages can be used for determining the monetary entitlement, and in the case of law changes, the laws under which eligibility is determined. A claim for benefits or waiting week credit shall be filed as follows:

(a) An individual must contact the claim center to file a claim for benefits.

(b) The effective date of the claim for benefits shall be the Sunday immediately preceding the date the claim is filed, provided that during that week the claimant is not entitled to earnings in excess of his weekly benefit amount. An exception to this rule may be made if the claimant can show it is more advantageous to have his claim effective the week in which he reported, provided he did not work full-time hours during that week.

(2) Filing a New Claim by Mail.

The Department may allow registration for work and claim filing by mail. If an individual completes and mails the forms as instructed, no later than twelve days following the date upon which they were mailed, as established by a postmark, his claim shall be effective the Sunday immediately preceding the date the request was made. If he fails to complete and mail his claim forms within the period prescribed above, his claim shall be effective on the Sunday immediately preceding the date the forms are received by the Department, provided, however, if good cause is established for the delay in accordance with Section R994-403-107a, the Department may permit an effective date as provided above.

(3) Social Security Number and Proof of Identity.

Unemployment insurance claims are identified by a claimant's social security number. A claimant filing a new claim for benefits shall be required to provide his social security number and proof of identity. Acceptable proof of identity will generally not be established without two reliable forms of identification. Failure to provide sufficient proof of identity or a social security number within three weeks of the effective date of the claim shall result in a denial of benefits in accordance with Subsection 35A-4-403(1)(e) of the Act.

R994-403-103a. Cancellation of Claim.

(1) Once a weekly claim has been filed and a monetary determination has been issued, the claim is considered to have been established even if no payment has been made or waiting week credit granted. The claim then remains established for 52 weeks during which time another regular claim may not be filed against the state of Utah. However, a claim may be canceled if the claimant submits a written request to cancel the claim and he can show one of the following circumstances:

(a) no weekly claims have been filed;

(b) cancellation is requested prior to the issuance of the monetary determination;

(c) the request is made within the same time period permitted for an appeal of the monetary determination and the claimant either returns any warrants that have been issued or he makes full repayment of benefits paid;

(d) the claimant had earnings equal to or greater than his weekly benefit amount in the form of severance or vacation payments applicable to all weeks for which claims were filed;

(e) the claimant returned to work and reported earnings equal to or greater than his weekly benefit amount applicable to all weeks for which claims were filed;

(f) the claimant meets the requirements for filing a new claim under the Worker's Compensation provision of Section 35A-4-404 or meets the eligibility requirements for filing a new claim following a disqualification due to a strike in accordance with the requalifying provisions of Subsection 35A-4-405(4)(c);

(g) the claimant meets the requirements for cancellation established under the provisions for combined wage claims; or

(h) the claimant has filed a UCX claim, unemployment compensation for ex-military, and it is determined he does not have wage credits under Title 5, chapter 85, U.S. Code.

R994-403-103f. Monetary Eligibility Requirements- General Definition.

Generally, claimants must have earned base period wages of 1 and 1/2 times the high quarter wages plus a minimum dollar amount. If the claimant is not monetarily eligible under the 1 and 1/2 times requirement, but meets the monetary base period wage requirement as defined in Section 35A-4-202 of the Act, the claimant may establish that he was paid wages for the insured work in at least 20 weeks during the base period with earnings of not less than 5 percent of the monetary base period requirement for each week. The requirement in the Act that the claimant show work and earnings in 20 weeks is only met if the claimant was paid wages as defined by the definition of "wages paid" in Section R994-401-204.

(1) Timeliness.

To preserve the original effective date of the claim, the claimant will have 10 days from the date of the notice of "Determination of Benefit Amount" plus three days if the determination is mailed, to make a written request for revision and to show that he has 1 and 1/2 times the base period wages or meets the alternative requirement of monetary eligibility consistent with Section R994-401-204. If a timely protest is not made, the claimant must establish good cause for failing to request a monetary determination recomputation within these time limitations to have the monetary determination recomputed or establish eligibility for a recomputation as provided by R994-406-305. If good cause cannot be shown, the claim will become

effective on the Sunday of the week in which a new claim is filed and the claimant is able to show eligibility under the 20 week standard.

(2) Monetary Base Period.

The monetary base period wage is established by the Department for each calendar year. The Department publishes that amount in the Benefit Schedule which is given to claimants when they file an initial claim. The calculation is made in accordance with Section 35A-4-202 of the Act. The dollar amount for each of the 20 weeks required to establish eligibility will be determined by the calendar year in which the initial claim is filed.

(3) Claimant Responsibility.

When the claimant is determined monetarily ineligible under the 1 and 1/2 times standard, it becomes the claimant's responsibility to show that he has 20 weeks of covered employment which meet the minimum dollar amount.

(4) Acceptable Proof of 20 Weeks of Covered Employment.

Acceptable proof shall include:

(a) Appropriately dated check stubs issued by the employer;

(b) A written statement from the employer showing dates of employment and the amount of earnings for each week;

(c) Time cards;

(d) Canceled payroll checks; or

(e) Personal or business records kept in the normal course of employment that would substantiate work and earnings.

R994-403-104a. Closing a Claim.

(1) A claim for benefits may be considered "closed" when a claimant:

(a) reports he is permanently back to work,

(b) is denied benefits for more than one week,

(c) discontinues filing weekly claims,

(d) reports relocation to an area served by a different local office,

(e) exhausts his rights under a specific benefit program,

(f) reports four consecutive weeks of earnings in excess of his weekly benefit amount, or

(g) has been notified to provide information and fails to report as instructed.

R994-403-105a. Reopening a Claim.

(1) A claimant may reopen his claim any time during the 52-week period after first filing, by following procedures outlined in Section R994-403-102a. The effective date of the reopened claim will be the Sunday immediately preceding the date the claimant reports unless good cause is established for failure to report during a prior week in accordance with Section R994-403-107a.

(2) Proof of identity shall be required when reopening a claim as prescribed under Subsection R994-403-102a(3).

R994-403-106a. Filing Weekly Claims.

(1) The claimant is solely responsible for filing weekly claims. To maintain continuing eligibility for benefits an individual shall file weekly claims in person, by mail or by telephone in accordance with instructions from the Department.

(2) Time Limit for Filing Telephone Claims.

Each claim should be filed as soon as possible after the Saturday week ending date. The Department will permit a period of 20 days after the week ending date to file a timely claim by telephone. A telephone claim filed 21 or more calendar days after the week ending date shall be denied unless good cause for late filing is established in accordance with Section R994-403-107a.

(3) Time Limit for Filing Bi-Weekly Claim Cards.

If filing by mail or in person through a local office, each week of the bi-weekly claim card shall be considered separately to determine if it has been filed timely. The card must be received by the Department within 20 days from the week ending date of week one in order for week one to be considered timely. Both week one and week two will be considered late if the bi-weekly card is received by the Department 21 or more calendar days after the week ending date for week two.

(4) When circumstances prevent the preparation of the bi-weekly claim card by the Department prior to the week ending date of week two, the print date of the claim card, rather than the week ending date is then reviewed to determine timeliness. Both week one and week two shall be considered late if received 21 or more calendar days after the print date.

R994-403-107a. Good Cause for Late Filing.

(1) A claimant has the duty to establish, by competent evidence, that good cause existed for not claiming benefits as prescribed. The Department has a responsibility to NOT apply excessive harshness or technicality in determining good cause. Some reasons for the time limitations on filing claims with respect to the claims filing process are:

(a) to pay the first claim in a prompt manner consistent with federal payment standards,

(b) to pay benefits in a sequential manner,

(c) to monitor the claim for potential violations of eligibility requirements, or

(d) to allow a claimant to correctly respond to the questions on his claim with respect to the week for which the claim is filed.

(2) Good cause for late filing will generally be established by evidence a claimant was prevented from filing a timely claim. The proof of inability to properly file may establish unavailability for work. Some examples that may establish good cause for late filing but may raise an availability issue are:

(a) a crisis of several days duration that interrupts the normal routine during the time the claim should be filed,

(b) hospitalization or incarceration,

(c) coercion or intimidation exercised by the employer to prevent the prompt filing of a claim, and

(d) failure of the Department to discharge its responsibilities promptly in connection with a claim.

(3) Some examples of reasons for late filing that may NOT be considered good cause are:

(a) failure to affix correct postage or otherwise properly mail the claim, including placing for mailing somewhere other than in an approved Postal Service mail box or mail drop,

(b) failure to mail the claim far enough in advance to reasonably insure delivery to the Department within the allowable time frame,

(c) delegation of the mailing or filing responsibility to another person,

(d) procrastination for non-compelling reasons,

(e) misplacing the claim, the claim filing telephone number or Personal Identification Number (PIN),

(f) vacation,

(g) temporary or minor illness,

(h) transportation problems,

(i) failure to notify the Department of the proper name, address or an address change, and

(j) failure to properly label a personal mail box to insure mail delivery, and

(k) reliance upon inaccurate advice from friends, relatives, other claimants or similar sources as the Department is, and shall remain, the only acceptable source of information about unemployment insurance.

R994-403-108a. Time Limitation on Backdating.

No claim may be backdated if filed over 65 weeks following the date of separation.

R994-403-109b. Registration, Workshops, Deferrals - General Definition.

(1) A claimant shall register for work at an Employment Center unless, at the discretion of the Department, registration is waived or deferred. Thereafter, he must continue to report, as required by the Department.

(2) Failure, without good cause, to register for work or to report to the Department, when required, may result in a denial of benefits. Good cause for failure to register for work or to report to the Department when required will be established by evidence that the claimant was prevented from registering or reporting. The proof of inability to register or report may raise an availability issue.

R994-403-110b. Job Search Workshops and Conferences.

The Department may require attendance at special conferences or workshops designed to assist claimants with job seeking skills, developing resumes, telephone usage, personal interviewing techniques, and other, necessary skills. Failure, without good cause, to participate in a Job Search Workshop or other required conference may result in a denial of benefits in accordance with Section R994-403-109b. The denial will begin with the week the claimant failed to attend the workshop or conference and ends with the week he contacts the Department and schedules an appointment to attend the next available session.

R994-403-111b. Deferral of Work Application.

(1) The Department may elect to defer the work registration requirement. If a claimant is placed in a deferred status, he is not required to actively seek work, but must meet all other availability requirements of the Act. Employers shall be notified when former employees filing for benefits are not required to seek work with other employers. Deferrals are generally limited to the following circumstances:

(a) Labor Disputes.

If a claimant is unemployed due to a labor dispute, he may have his work application deferred while an eligibility determination under Subsection 35A-4-405(4) is pending. If benefits are allowed, he must register for work immediately.

(b) Union Attachment.

If a claimant is a union member in good standing, is on the out of work list or otherwise eligible for referral to union work and has received substantially all his base period employment through the union, he may be eligible for a deferral. If a deferral is granted to a union member, it shall not be extended beyond the mid-point of the claim unless the claimant can demonstrate he has a reasonable expectation of obtaining employment through the union.

(c) Employer Attachment.

If a claimant is attached to a regular employer with a definite date of recall, he may have his work registration deferred to the date of recall. However, the deferral should not extend beyond the mid-point of a claim or for more than ten weeks.

(d) Three Week Deferral.

A claimant who obtains an offer of full-time work to begin on a definite date within three weeks, shall be deferred for that period.

(e) Seasonal.

A claimant may be deferred when, due to seasonal factors, work is not available in his established, base period occupation, if other suitable work is not available in the area.

R994-403-112b. Four Week Delayed Work Registration.

A new claimant may be given the option, at the discretion of the Department, to delay completion of the department's work application until the fifth consecutive week of filing. However, claimants are required to actively seek work each week. A claimant who wishes to complete a work application when filing a new claim may do so. A claimant whose work application is not otherwise deferred, must register for work during the fifth week of eligibility.

R994-403-113b. Not Eligible for Deferral.

There are specific groups of claimants who may not have their work applications deferred. Claimants who are filing for special federal benefits that require a work search are not eligible for deferrals unless Department approval for training has been granted.

R994-403-114b. Profiled Claimants.

(1) Individuals who are likely to exhaust unemployment benefits will be identified through a profiling system and required to participate in reemployment services. These services may include job search workshops, job placement services, counseling, testing, and assessment.

(2) To be excused from reemployment services, the claimant must show:

(a) that he has completed equivalent services within the twelve month period immediately preceding the date he is scheduled for reemployment services; or

(b) that he had justifiable cause for not participating in reemployment services. Justifiable cause is established if the claimant's failure to participate is reasonable for the circumstance or beyond his control.

(3) Failure to participate in reemployment services without

justifiable cause will result in a denial of benefits beginning with the week the claimant refuses or fails to attend scheduled services and continuing until the week he contacts the Employment Center to arrange participation in the required reemployment service.

(4) A claimant who fails to participate in reemployment services will have his availability for work evaluated under the rules of Subsection 35A-4-403(1)(c).

R994-403-115c. Able and Available - General Definition.

The primary obligation of the claimant is to become reemployed. A claimant may meet all of the other criteria established for eligibility but, if he cannot demonstrate ability, availability, and an active good faith effort to obtain work, benefits cannot be allowed. A principal requirement of the Employment Security Act is that the claimant must be attached to the labor force. This means the claimant can have no encumbrances to immediate acceptance of full-time work. He must be actively engaged in efforts to obtain employment. He must have the necessary means to become employed including tools, transportation, licenses, and child care. He must desire to obtain employment. The main reason for his continued unemployment must be the lack of suitable job opportunities. There is a presumption of non-availability when an individual voluntarily leaves work, has physical or mental restrictions, or is otherwise responsible for becoming or remaining unemployed. The only exception to the requirement to be available for, actively seeking and able to accept work is established under Subsections 35A-4-403(2)(a)and 35A-4-403(2)(b) for Department Approval, which defines availability for those in approved schooling in other terms.

R994-403-116c. Able.

(1) Physical or Mental Impairments.

The claimant has the responsibility to show that he has no physical or mental impairments which would preclude immediate acceptance of full-time work. A recent history of employment is one indication of a claimant's ability to work. If there has been a change in the claimant's physical or mental capacity since his last employment, there is a presumption of inability to work which must be overcome by competent evidence that there is some reasonable likelihood that jobs exist which the claimant is capable of performing before unemployment insurance benefits can be allowed. Pregnancy is treated the same as other physical limitations.

(a) Past Work History.

If an individual earned his base period wages while working with a physical or mental impairment, and is otherwise eligible, and is willing to accept any work within his ability and is actively seeking that work, his unemployment is due to lack of employment opportunities and not due to inability to work. Under these circumstances, benefits should not be denied solely on the basis of the physical or mental disability.

(b) Medical Verification.

When an individual has a physical or mental impairment, medical information from a health care specialist is one form of evidence used to determine the claimant's ability to work. The competent specialist's recommendations are presumed to be accurate with regard to the claimant's ability to work; however, the claimant may overcome the opinions of specialists by showing other evidence that the impairment does not interfere with ability to work. If the claimant is not currently under professional care, verification may not be required.

(2) Temporary Disability.

A claimant's ability to work may be affected any time there is an illness or injury that is expected to continue for a short period of time.

(a) Medical Absence from Work.

A claimant is not eligible for benefits if he is not able to work at his regular job due to a temporary disability provided the employer has agreed to allow him to return to his job when he is able to do the work. In this case, the claimant's unemployment is due to an inability to work rather than lack of available work. The claimant is not eligible for benefits even if there is other work he is capable of performing with his disability.

(b) No Employer Attachment.

If the claimant has been separated from employment with no expectation of being allowed to return when he is again able to work, or his temporary disability occurred after he became unemployed, benefits may be allowed even though he cannot work in his regular occupation provided he can show there is work he is capable of performing, and for which he reasonably could be hired. The claimant must also meet other eligibility requirements including making an active work search.

(3) Hospitalization.

While a claimant is hospitalized, he is not able to work unless the hospitalization is on an out-patient or residency basis and there is professional verification that the claimant is not restricted from immediately working full-time. Immediately following hospitalization, a rebuttable presumption of physical inability continues to exist for the period of time needed for recuperation or adjustment.

(4) Workers' Compensation.

(a) Compensation for Lost Wages.

A "Temporary Total" award of workers' compensation is made initially to replace lost wages based on a conclusion that the individual is unable to work. If the claimant has been granted an award based on his contention or medical verification that he is unable to work, eligibility for unemployment insurance benefits cannot be established. When the claimant is no longer entitled to a Temporary Total award he must file his unemployment insurance claim within 90 days after he is released for work to establish a claim using wage credits earned prior to the injury. Section 35A-4-404 details claimant eligibility for benefits after receiving workers' compensation or occupational disease compensation. He will not be considered able to work without a medical release or other evidence that he is able to perform full-time work.

(b) Subsequent Awards.

The worker may subsequently receive a "permanent partial" or "permanent total" award under the state workers' compensation laws. A claimant may be eligible for unemployment insurance benefits while receiving an award if he can show he is able and available to perform any full-time work which he reasonably could expect to obtain even though he has a physical or mental impairment. However, the receipt of such an award may raise a presumption of non-availability, which is

determined consistent with the preceding provisions dealing with physical or mental impairments. Disability payments are not reportable as wages under Subsection 35A-4-401(3).

R994-403-117c. Available.

(1) General Requirement.

The primary obligation of a claimant is to be available for full-time work. Any restrictions on availability, whether self-imposed or beyond the control of the claimant, lessen his opportunities to obtain or accept suitable work. When a claimant was recently employed under restrictive conditions and is unemployed for some other reason, the claimant shall initially be considered available without regard to that restriction. However, a claimant cannot continue to restrict his availability to certain hours, types of work, rate of pay, or conditions not usual or customary in his occupation, trade, or industry and still maintain his eligibility for benefits. The claimant must be available for any work which meets the suitable work test as defined in Subsection 35A-4-405(3) and Section R994-405-309.

(a) Requirement for Modification of Restrictions.

The number of weeks permitted before restrictions, beyond what is customary for the occupation, must be modified will depend upon: prospects of employment, severity or number of restrictions, extent of work search efforts, and the average time required to become reemployed considering the entire labor market and the specific occupation. Other types of restrictions which could interfere with reemployment include residence outside the normal service area of an Employment Center, lack of transportation, domestic problems, school attendance, military obligations, church or civic activities. When modifications of restrictions are required, the claimant shall be expected to contact employers and make work applications consistent with the modifications to enhance employability. Necessary changes will also be made on his Employment Center work application to facilitate referrals to prospective employers.

(i) At least four weeks shall be allowed during which the claimant may restrict his availability to work consistent with the base period employment which was most advantageous to him before modifications of restrictions would be required. During the fifth week of the claim, if a restriction contributes in any way to the continuing unemployment, the claimant shall be advised by a Department representative that he has restrictions that reduce his chances of becoming employed and adjustments will be required to maintain eligibility. Failure to follow reasonable advice from the representative may result in a conclusion of non-availability.

(ii) The maximum number of consecutive weeks that a claimant may be eligible for benefits while having restrictions, beyond those customary in the occupation, shall be half the number of weeks of his claim.

(2) How Use of Time Affects Eligibility.

A claimant cannot be considered as meeting the requirement of being available for work if he is involved in any activity which precludes acceptance of employment. It is not the intent of the Act to subsidize vacations, personal pursuits, no matter how compelling, or other leisure time activities that would in any material way interfere with immediate reemployment. While it is not expected that a claimant will be confined to his home or telephone at times not actually engaged in work seeking activities, a claimant shall not be considered available for work if he is precluded for any reason from accepting work. Examples of activities which preclude a claimant from accepting work include: absence from the area where he is living or willing to accept employment, hospitalization, illness, incarceration, vacation, time spent in conjunction with funerals or other family gatherings, or time spent on any activity which cannot be immediately abandoned or interrupted to seek and accept work.

(a) Rebuttable Denial of Benefits.

Any activity which occupies the claimant for more than 24 consecutive hours during his normal working days, shall be presumed to adversely affect the claimant's opportunities to seek and accept employment and therefore he shall be determined ineligible for benefits. Days customarily worked in the claimant's occupation includes as appropriate, weekends and holidays, or business days which are Monday through Friday. Activities which may adversely affect opportunities to obtain employment include travel, incarceration, illness, hospitalization, self-employment, civic or church activities, or any other leisure time activity that would interfere with immediate reemployment. This presumption can be overcome by a showing that the activity did not preclude offers of work, referrals to work, contacts from an Employment Center, or an active search for work. For example, if the claimant had been in contact with an employer and was told that he would be called, it must be presumed that if the claimant was absent from his residence beyond what is usual for daily activities, he may have missed an offer of work. Unless the employer verifies that no attempt was made to contact the claimant, benefits will be denied. However, when a claimant is away from his residence but has made arrangements to be contacted and can return quickly enough to respond to any opportunity for work, the presumption of non-availability may be overcome. The conclusion of non-availability may also be overcome in the following circumstances:

(i) Travel Which is Necessary to Seek Work.

If it is necessary to travel to seek work, the travel is not delayed and primarily for the purpose of applying for or accepting a job, such travel shall not result in a denial of benefits regardless of the number of days required for the trip.

(ii) Definite Offer of Work or Recall.

If the claimant already had, or obtained a definite offer of full-time employment or date of recall to begin within three weeks, he has demonstrated his attachment to the labor market and accomplished the purpose of the work search. Therefore, he does not have to demonstrate further availability provided there is no reasonable expectation that the date of hire will be changed. He is no longer required to seek other work. Therefore, in this limited circumstance, if being away for short periods of time or otherwise removing himself from the labor market does not adversely affect his reemployment, benefits may be allowed provided he has made arrangements to be contacted. Benefits shall nevertheless be denied for a week of substantial illness or hospitalization because the statute requires that a claimant be able to work.

(iii) Jury Duty or When Court Attendance is Required.

If a claimant is not available to seek or accept work because he is before any court due to a lawfully issued summons

where he is neither a defendant or a plaintiff, or his presence is required by the court for jury duty, he will not be denied benefits. Since jury service or court attendance is a public duty required by law, an otherwise eligible claimant will be considered available for work unless he has employment which he is unable to continue because of his court duties, or is offered available, suitable employment, which he refuses or delays because of his court service. The time spent in court service is not a personal service performed under a contract of hire in an employment situation; therefore, even though it involves an individual's full time, he is not considered employed.

(b) Non-Rebuttable Denial of Benefits.

(i) Refusal of Work.

A claimant generally demonstrates that he is not available for work if there is any suitable work he does not or cannot accept. If he was not available for work, even though he had valid reasons for not accepting the work, benefits will not be allowed for the week or weeks in which the work could have been performed. Benefits would also be denied when a claimant fails to be available for job referrals or a call to work under reasonable conditions consistent with a previously established work relationship. Examples of when this would apply include referral attempts from: a temporary employment service, a school district for substitute teaching, or any other employer for which work is "on-call."

(ii) Failure to Perform All Work During the Week of Separation.

(A) Benefits will be denied for the week in which separation from employment occurs if the claimant's unemployment was caused because he was not able or available to do his work. In this circumstance, there is a presumption of continued inability or unavailability and an indefinite disqualification will be assessed until there is proof of a change in the conditions or circumstances.

(B) If the claimant was absent from work during his last week of employment and he was not paid for the day(s) of absence, benefits will be denied for that week. The claimant will be denied benefits under this Section regardless of the length of the absence.

(3) Hours of Availability.

(a) Full-Time.

To meet the availability requirement, a claimant must be ready and willing to immediately accept full-time work. Full-time work generally means 40 hours a week, but may vary due to customary practices in an occupation. If the claimant was last employed less than full-time, there is a rebuttable presumption that the claimant continues to be available for only part-time work.

(b) Full-Time Work for Permanently Disabled Claimants.

If a claimant has an actual physical limitation and therefore is available for less than the customary full-time hours of work, all of the following circumstances would have to be met before the claimant could be considered available for work as required for eligibility:

(i) The claimant must be able to work, but must have an actual involuntary physical limitation. There must be substantial evidence of the nature, duration, prognosis and severity of the medical limitation to establish that it clearly leaves the claimant incapable of customary full-time hours of work. A limitation of hours caused by other than physical limitation may not be considered; and

(ii) The prior work must have been substantial in amount but part-time, at least throughout the claimant's base period. "Substantial" is defined as over 50 percent of the hours customarily worked in the occupation. It must have been part-time because of the physical limitations as described in the preceding paragraph; and

(iii) An active local market of employment must exist for workers in claimant's occupation under the conditions within which the claimant is capable of working; and

(iv) The claimant must be making a current active personal search for work.

(c) Other Than Normal Working Hours.

If the claimant worked for an employer under other than normal working hours and the adjustment was made to accommodate the peculiar circumstances of the claimant, availability for normal full-time work as defined for the industry is not established, even though the hours previously worked by the claimant may have been 40 or more.

(4) Wage Restrictions.

(a) No claimant will be expected as a condition of eligibility to accept a wage that is less than the state or federal minimum wage, whichever is applicable, or a wage that is substantially less favorable to the claimant than wages prevailing for similar work in the locality. Benefits cannot be allowed if the claimant is restricting himself to a wage that clearly is not available. The following are the limits that a claimant may place on his wage demands while maintaining eligibility:

(i) At the initial time of filing the claimant may not restrict his wage requirements to an amount greater than the highest wage earned during his base period or the highest wage available in the locality, whichever is lower, and there must be some reasonable expectation that work can be obtained at that wage.

(ii) After four consecutive weeks of filing the claimant may be instructed by a Department representative that he must be available for any wage earned during the base period of the claim, if the highest wage earned during the base period is not reasonably available.

(iii) When the claimant has been filing continuously for a period of time equal to 1/3 of the maximum number of weeks of his entitlement, he cannot require a wage higher than the lowest wage he earned during his base period.

(iv) After filing continuously for 1/2 of his weeks of entitlement, he must be willing to accept a 10% reduction from the lowest base period wage if his wage requirement is higher than the prevailing wage for his occupation because it shall be concluded that his continued unemployment is at least in part due to his wage demand. He must also gradually make additional reductions in his wage demand as necessary to reach a wage demand equal to the prevailing rate for similar work in the locality by the time he has filed continuously for 2/3 of his weeks of entitlement.

(v) After filing continuously for 2/3 of his weeks of entitlement, a claimant must be willing to accept the prevailing wage for similar work in the locality.

(vi) When a claimant reopens a claim after employment,

he must be willing to accept the wage last earned and make additional reductions as required after continuous weeks of filing. If the claimant has had intervening employment at the higher wage, the wage reductions will not be required until he has received those portions of his benefits in consecutive weeks of filing.

(b) Evidence of the claimant's compliance with this requirement will be shown by the wage the claimant indicates as acceptable on work applications when applying for work with prospective employers, or on work applications with Employment Centers.

(c) Exception for Deferred Claimants.

The provisions of this section shall not apply to those claimants who qualify for deferrals as explained in the Subsection 35A-4-403(1)(b) and R994-403-203.

(5) Type of Work.

(a) One of the purposes of the unemployment insurance program is to help a claimant to preserve his highest skill by providing an income during a period of unemployment during which the claimant can seek work similar to that which he had prior to becoming unemployed. A skill is defined as a marketable ability which was developed over an extended period of time by training or experience that could be lost if not used. It is not the intent of the program to subsidize individuals who wish to improve their employment status. The following are the limits that a claimant may place on the type of work he is willing to accept and maintain eligibility:

(i) At the time of filing an initial claim or reopening a claim following employment, a claimant may restrict his availability to the highest skilled employment performed during his base period provided he has a reasonable expectation of obtaining that type of work. A claimant who is not willing to accept employment consistent with that performed during the base period must show some compelling reason for that restriction in order to be considered available for work.

(ii) After the claimant has filed continuously for 1/3 of his weeks of entitlement, a claimant shall not be eligible for benefits unless he is willing to accept work in all the occupations in which he worked during the base period of his claim. However, the Department representative may advise the claimant after four consecutive weeks of continuous filing that his work search needs to be expanded to include other base period occupations.

(iii) After the claimant has filed continuously for 2/3 of the weeks of his entitlement, availability is not demonstrated unless the claimant is willing to accept work in other occupations that he is reasonably fitted to perform by past experience or training or to which his skills could logically be transferred.

(b) Contract Obligation.

If a claimant is restricted due to a contract obligation with a former employer from competition with or acceptance of employment in the claimant's regular occupation, the claimant would not be eligible for benefits unless he can show that there is another occupation for which he has sufficient skills or training in which he could reasonably obtain employment, and he is actively seeking that type of work.

(c) Restriction to Former Employer.

If a claimant is not willing to consider or accept work except with a former employer and does not have a definite date of recall within the period of time during which a deferral could be granted in accordance with Subsection 35A-4-403(1)(b) or Section R994-403-203 he cannot be considered available for work. One indication of the claimant's restriction to a former employer is a failure to actively seek other permanent employment. However, the claimant may be eligible for benefits even though he chooses to remain available for recall to a former employer and does not qualify for a deferral if he is actively seeking temporary work which he reasonably could obtain. Such temporary work may have to be in a different occupation and at a lower rate of pay. Therefore, the claimant will have to make such adjustments in his attitudes and on work applications to establish eligibility.

(6) Employer/Occupational Requirements.

If the claimant does not have the license or special equipment customarily required for the type of work he wants to obtain, the claimant cannot be considered available for work unless there are other types of work which he is actively seeking and has a reasonable expectation of obtaining, based on his skills and abilities.

(7) Temporary Availability.

When an individual is limited to temporary work because of anticipated military service, school attendance, travel, church service, relocation, or any other anticipated restriction on the claimant's future availability, availability is only established if the claimant is willing to accept, and is actively seeking temporary work. The claimant must also show there is a realistic expectation that the type of work sought is available on a short-term basis. A claimant may have to accept work in another occupation if short term employment is not customary in his regular occupation. Evidence of a genuine desire to obtain temporary work may be shown by registration with and willingness to accept work with temporary employment services.

(8) Distance to Work.

(a) Customary Commuting Patterns.

A claimant must be available and willing to commute within reasonable commuting patterns for his occupation and community. The claimant must show that he has reasonable access to transportation, whether public or private. Acceptable means of transportation include: walking, bicycling, public busses, taxis, private vehicles including motor bikes and scooters, riding with friends, relatives, co-workers or in car pools. If the claimant used means other than private transportation in order to earn wage credits, availability is established for as long as there exists a labor market available to the claimant within his ability and willingness to commute.

(b) Removal to a Locality of Limited Work Opportunities.

The individual who moves from an area of substantial work opportunities to an area of limited work opportunities must demonstrate that the new locale has work for which he is qualified and willing to perform. If the work which the claimant can and will perform is so limited in the new locale that he has little expectation of becoming reemployed, his continued unemployment is the result of the move and not the failure of the labor market to provide opportunities for employment. Once this has been established, after the claimant has had an opportunity to explore the labor market, he is no longer eligible for benefits because he has removed himself from the labor market. If a claimant moves to an area where there is no work

which the claimant can do, benefits shall be denied immediately.

(9) Retirement.

(a) When a claimant is retired there is a presumption of withdrawal from the labor market, regardless of the reason for the retirement, because a retired claimant may have fewer incentives to work than other claimants. Circumstances which cause a presumption that a retired individual lacks attachment to the work force are:

(i) income sufficient to meet financial requirements,

(ii) income or retirement penalties which motivate against substantial employment,

(iii) intended uses of leisure time including hobbies, travel, civic or church responsibilities,

(iv) the absence of a plan and program for becoming employed consistent with realistic opportunities for employment of a retired individual,

(v) personal circumstances of the claimant's spouse,

(vi) health,

(vii) consistency, intensity, and reasonableness of efforts to obtain work.

(b) If the retired claimant can show by his actions that he is genuinely interested in obtaining employment and he is actively seeking work, benefits may be allowed provided he meets other requirements for eligibility.

(10) Other Restrictions.

(a) School.

A claimant attending school who has not been granted "Department approval" must meet all requirements with respect to being able, available and actively seeking work. Areas that need to be examined when making an eligibility determination with respect to a student include reviewing a claimant's work history while attending school, coupled with his efforts to secure full-time work. If the hours of school attendance conflict with the claimant's established work schedule or with the customary work schedule for the occupation in which the claimant is seeking work, benefits will generally be denied. An announced willingness on the part of a claimant to discontinue school attendance or change his school schedule, if necessary, to accept work, must be weighed against the time already spent in school as well as the financial loss the claimant may incur if he were to withdraw.

A presumption of non-availability may also be raised if a claimant moves, for the purpose of attending school, from an area with substantial labor market to a labor market with more limited opportunities. In order to overcome this presumption, the claimant must demonstrate there is full-time work available in the new area which he could reasonably expect to obtain.

(i) Employment of Youth.

Title 34, Chapter 23 of the Utah Code imposes limitations on the number of hours youth under the age of 16 may work. The following limitations do not apply if the individual has received a high school diploma or is married. An age certification issued by the school merely gives correct age, not authority to work. Claimants under the age of 16 who do not provide proof of meeting one of these exceptions are under the following limitations whether or not in student status because they have a legal obligation to attend school. Youth under the age of 16 may not work:

(A) During school hours except as authorized by the proper school authorities,

(B) Before or after school in excess of 4 hours a day,

(C) Before 5:00 a.m. or after 9:30 p.m. on days preceding school days,

(D) In excess of 8 hours in any 24 hour period,

(E) More than 40 hours in any week.

(b) Domestic Obligations.

(i) When a claimant has an obligation to care for children or other dependents, he must show that other arrangements for the care of those individuals has been made for all hours that are normally worked in the claimant's occupation and must show a good-faith, active work search effort.

(ii) Following childbirth, there is a period of time when the need or desire to care for the newborn infant is stronger than the desire or need to work. Since an infant cannot be left without proper supervision, it is presumed that the mother has the obligation to care for the infant and she is not available for work until arrangements are made for the child's care. A re-entry into the labor market is not established until the claimant has indicated a desire to re-enter the labor market by making all necessary physical and mental adjustments, and other arrangements, to enable her to work and she has demonstrated this by beginning a good faith, active search for work. The claimant must also be willing to accept work at a wage consistent with Subsection R994-403-117c(4), even though faced with additional child care expenses.

R994-403-118c. Work Search.

(1) General Requirements.

The Employment Security Act requires, by direct statutory language, that a claimant must act in good faith in an active effort to secure employment each and every week for which benefits are claimed. Efforts to find work must be judged by the standards of the occupation and the community. What constitutes an active good faith search for work for a professional person, may be different from the active good faith search for a non-professional person. It may not be appropriate for professionals to call in person upon prospective employers without first submitting resumes and making an appointment by phone. However, in the case of a non-professional, unannounced personal contacts are appropriate and acceptable.

(2) Active.

An active effort to look for work is generally interpreted to mean that a claimant should contact, in person, a minimum of two employers not previously contacted each week who would hire people in the occupation which the claimant has work experience or would otherwise be qualified and willing to accept employment. Although the minimum number of contacts required by the Department without specific instructions is two, individuals genuinely desirous of obtaining employment will generally make a work search in excess of the minimum requirement. Because the primary obligation of the claimant is to become re-employed, not merely to comply with the requirements of the Department, claimants are encouraged to develop a realistic plan for becoming re-employed which may mean making more than the minimum number of contacts. However, Department representatives, after taking into consideration the type of work the claimant is seeking and the opportunities available for contacting employers who could

reasonably be expected to hire in those occupations, may individually advise claimants of a specific number of in-person contacts the claimant is expected to make each week. The Department may not assign varying number or types of contacts for claimants in the same occupation or locality, as work search requirements should be consistent for all claimants in similar occupations unless unique circumstances warrant a reduction in the requirement. Failure of a claimant to make at least the minimum number of in-person contacts as instructed by a Department representative shall create a rebuttable presumption that the claimant is not making an active work search. The claimant may overcome this presumption by showing that he has pursued a job development action that would be at least as likely to result in employment as the specific minimum number of employer contacts given him by the Department representative. Reading the classified section of the newspaper, canvassing employers indiscriminately by telephone, writing resumes, contacting friends or church representatives, or looking at the bulletin board in the Employment Center, do not replace the need for in-person contacts because they do not allow the claimant to complete a work application or to be immediately considered for hire.

(3) Good Faith.

Good faith efforts are defined as those methods which a reasonable person, anxious to return to work, would make if sincerely desirous of obtaining employment. A good faith effort is not established simply by making a specific number of contacts to satisfy the Department requirement. A good faith effort requires that the claimant, when contacting employers, emphasize his interest in the job and conduct himself in such a way as to provide the maximum possibility of his being considered for hire. He should contact employers at the designated time, place and in the manner specified. He should be dressed and groomed appropriate for type of work he is seeking and present no unreasonable restriction on acceptance of the work. Answers on employment applications should be reasonable, honest, show a genuine interest in obtaining employment, and emphasize those skills, experience or aptitudes which the claimant has that are consistent with the job requirements. Contacts should be made directly with persons having the authority to hire.

(4) Union Attachment.

(a) Union attachment is sufficient to meet the requirements of an active work search if the claimant is eligible for a deferral as established under Subsection 35A-4-403(1)(b). When a claimant is deferred, it is because he has reasonable prospects of employment through the union and his union attachment puts him in contact with the majority of the employers he normally would be expected to contact. Therefore, for those claimants who meet the qualification for deferral, the union attachment is an acceptable substitute for a personal work search.

(b) If the claimant is not in a deferred status because he did not earn substantially all his wage credits in employment as a union member or the deferral has ended, he must meet the requirements of an active, good faith search for work by personally contacting employers in addition to contacts with the union. This work search is required even though unions may have regulations and rules which penalize members for making independent contacts to try to find work or for accepting non-union employment.

R994-403-119c. Extended Benefit Requirements.

Extended benefits are those additional benefits paid in times of high unemployment. Claimants filing for extended benefits established under specific state or federal programs are required to be available under different conditions and make a more extensive work search effort than is required of claimants receiving regular program benefits. Disqualification for failure to meet the work search requirements are made in accordance with extended benefit rules established under Sections 35A-4-402 and R994-402-201 through R994-403-113. Other special programs may be governed by various sections of the Act or federal public laws.

R994-403-120c. Burden of Proof.

Proof of eligibility for benefits is the responsibility of the claimant. The claimant has an obligation to report any information that might affect his eligibility and provide any information requested by the Department which is required to establish that he is able, available, and actively seeking work. He must keep a detailed record of the employers contacted each week for which benefits are claimed. The records will include the company name, address and telephone number, date of contact, type of work, name of the person contacted, and the results of the contact.

R994-403-121c. Period of Ineligibility.

(1) Eligibility for benefits is established on a weekly basis. When the claimant has demonstrated that he is not able or available for work or actively seeking work, there may be a presumption that the circumstances will continue and an indefinite disqualification may be assessed. This disqualification shall end when the claimant establishes that conditions have changed and he meets the requirements for eligibility. A claimant may have his eligibility under Subsection 35A-4-403(1)(c) of the Act reconsidered on a weekly basis by reporting to the local office and requesting a reassessment of his eligibility following a disqualification.

(2) If lack of a good faith work search is established with regard to prior weeks, a disqualification will be for only the weeks in which the work search was inadequate and not in excess of four weeks preceding the interview unless benefits were allowed on the basis of false reports by the claimant of work search contacts. The Department shall disqualify all weeks in which it is discovered that a claimant was not able or available to accept work without regard to the four-week limitation.

R994-403-122e. Failure to Furnish Information.

Fundamental to the proper administration of the Unemployment Insurance Program is the gathering and exchange of information. When a claimant or employer cannot or will not provide information, proper determinations with regard to the claimant's eligibility cannot be made. The failure of the claimant to provide information may come at various times during the benefit year, and to avoid improper payments, benefits must be denied under Subsection 35A-4-403(e) until the information is provided. Where time limitations are not

prescribed by law, the claimant and employer must be allowed a reasonable amount of time to provide the information requested by the Department.

R994-403-123e. Period of Disqualification.

For failure to provide wage or separation information or any other information identified at the initial filing of the claim, the disqualification period begins with the effective date of the claim. All other denials will begin with the week in which the allotted time for responding ends. In all cases, the disqualification will continue until the Saturday of the week prior to the week in which the claimant provides the information or contacts the Department to make arrangements to provide the information, whichever is first.

R994-403-124e. Good Cause.

No disqualification or penalty will be assessed under this provision of the law if the claimant or employer can show good cause for failing to provide the information within the time-frame as requested. Good cause, as it applies to this section of the law, may be established if the claimant or employer makes reasonable attempts to provide the information within the time-frame requested, or the claimant or employer was prevented from complying due to circumstances which were compelling or beyond their control.

R994-403-125e. Information Claimants Must Provide.

(1) Utah law requires that the claimant's weekly benefit amount be computed based upon his total wages for insured work during his base period. The wage information must be requested from employers based on the employment reported by the claimant. The claimant has failed to provide information necessary to establish his claim if he does not list all base period employers and provide the correct business name and address for each employer listed. If, after being found monetarily ineligible, he subsequently identifies sufficient additional employment to establish a claim, the monetary determination will be revised to include the additional employment and benefits may be allowed under Subsection R994-403-125e(2) after the disqualification period.

(2) Claimants must provide information which is needed to determine eligibility as requested on the initial claim form, or on any other official document of the Department. Claimants are required to correctly report the reasons for separation from past employers when filing a new claim, reopening a claim, or any time the claimant is separated from employment during the benefit year. The Department may require a complete statement of the circumstances precipitating the separation. Information with regard to work search and other availability restrictions may be requested by the Department on a regular basis. Claimants may be required to provide documentary information, including medical reports, class schedules and school grades.

(3) Benefits may also be denied when claimants fail to report at the time and place designated for an in-person interview with a Department representative which is necessary to determine claimant eligibility or make job referrals.

R994-403-126e. Wage Information.

It is the employer's responsibility to report correct wage information. The claimant may be requested to supply wage information. However, since it is not the claimant's responsibility to report wage information, no disqualification will be assessed for failure to do so under Subsection 35A-4-403(1)(e).

R994-403-127e. Reporting Incorrect Information.

Providing incomplete or incorrect information shall be treated the same as a failure to provide information if the incorrect information results in an improper decision with regard to the claimant's monetary or non-monetary eligibility. This includes failure to report or list all work search contacts as requested at eligibility interviews or on written documents.

R994-403-128e. Overpayments.

If benefits have been improperly allowed based on the claimant's failure to provide information, or based on incorrect information provided by the claimant, the resultant overpayment may be assessed in accordance with Subsection 35A-4-406(4).

R994-403-129e. Employer Penalty.

If the employer fails to provide wage information as requested on Form 625, or separation information as requested on Form 606, he relinquishes his rights with regard to the affected claim and ceases to be an interested party with respect to that claim. The employer may raise questions concerning the claimant's eligibility with the Department which may then choose to exercise continuing jurisdiction with respect to the claim, under Subsection 35A-4-406(2) The Department may subpoena or call the employer and claimant as witnesses to determine the claimant's eligibility. The employer will not be eligible to appeal decisions with regard to the claimant's right to benefits and relief of charges resulting from payments to that claimant will not be granted. However, if the Department exercises continuing jurisdiction and denies benefits, any overpayment established and collected will be credited to the employer's benefit ratio account.

R994-403-131g. Eligibility for Benefits and Requalifying Wages - General Definition.

When establishing a new claim, a claimant may have unused wage credits sufficient to establish monetary elibibility for a subsequent claim. However, before benefits may be paid on the subsequent claim, a claimant who has received during the first benefit year must have worked since the beginning of that benefit year.

R994-403-132g. Subsequent Employment in Insured Work.

Each of the following three elements must be satisfied to meet the requirements of Subsection 35A-4-403(1)(g):

(1) Work must have been performed after the effective date of the original claim, but not necessarily during the benefit year of the original claim.

(2) Actual services must have been performed, not just the establishment of insured wages attributable to a period of time subsequent to the effective date of the original claim including vacation, severance pay, or a bonus.

(3) Earnings from insured work must be equal to at least six times the weekly benefit amount of the original or

subsequent claim, whichever is lower. Insured work is employment subject to state or federal unemployment insurance programs, including railroad employment and active military duty. Active military duty includes any duty authorized by military orders, even if insufficient to monetarily qualify an ex-service member for a claim totally based on military wages.

R994-403-133g. Period of Disqualification.

(1)If a claimant satisfies the requirements of monetary eligibility under Subsection 35A-4-403(1)(f) he may establish a new claim. However, benefits shall be denied under Subsection 35A-4-403(1)(g) from the effective date of the claim and continuing until the week the claimant provides proof of insured earnings equal to at least six times his weekly benefit amount.

(2) Exception to Disqualification

The provisions of Subsection 35A-4-403(1)(f), do not apply unless the claimant actually received benefits during the original benefit year.

R994-403-201. Department Approval - General Definition.

Unemployment insurance is not intended to subsidize schooling. However, it is recognized that training may be a practical way to reduce chronic and persistent unemployment due to a lack of work skills, job obsolescence or foreign competition. The Employment Security Act limits the extent to which unemployment funds may be expended on behalf of claimants who need training. With the exception of very short-term training, Department approval is intended for classroom training as opposed to on-the-job training. Department approval is to be used selectively and judiciously. It is not to be used as a substitute for selective placement, job development, on-the-job training, or other available programs.

R994-403-202. Request for Department Approval.

Department approval shall not be granted unless a claimant would be disqualified under Subsection 35A-4-403(1)(c) due to school attendance. After it has been determined the claimant's school attendance is disqualifying under Subsection 35A-4-403(1)(c) he must submit a written request before Department approval shall be considered.

R994-403-203. Availability Requirements.

If Department approval is granted, the Act provides relief from the requirement to seek and accept work after the training begins. A claimant must make a work search prior to the onset of training, even if he has been advised that the training has been approved. However, a claimant shall not be required to conduct an active work search each week while in school or during the break period between successive terms as long as that break period is four weeks or less. A claimant attending approved schooling shall be placed in a deferred status and shall not be required to register for work. In addition, benefits shall not be denied when work is refused as satisfactory attendance and progress in school serves as a substitute for the availability requirements of the Act. Absences from school shall not result in a denial of Department approval if a claimant can demonstrate he is making up any missed work and is still making satisfactory progress in school. For the purposes of the subsection, satisfactory progress is defined as passing all classes with a grade level sufficient to qualify for graduation, licensing or certification, as appropriate.

(1) A disqualification under Subsection 35A-4-403(2)(a) shall be effective with the week the claimant knew or should have known he was not going to receive a passing grade in any of his classes or was otherwise not making satisfactory progress in school. The Department shall instruct the claimant at the time Department approval is granted that it is his responsibility to immediately report any information that may indicate a failure to maintain satisfactory progress. This includes incomplete work, unsatisfactory test scores and mid-term grades. A claimant also has the responsibility to report any sickness, injury or other circumstances that prevented him from attending school. If a claimant discontinues school attendance, drops or changes any classes before the end of the term, Department approval may be terminated immediately. However, discontinuing a class that does not reduce the school credits below full-time status, as defined by the educational institution, shall not result in the termination of Department approval. Department approval may be reinstated during any week a claimant demonstrates, through appropriate verification, he is again attending class regularly and making satisfactory progress.

(2) A claimant shall be ineligible for Department approval if he is retaking a class that was originally taken while he was receiving benefits under Department approval. However, if Department approval was denied during the time the course being taken was originally in progress, approval may be reinstated to cover that portion of the course not previously subsidized if the claimant can demonstrate he is making satisfactory progress.

R994-403-204. Qualifying Elements.

All of the following elements must be satisfied for a claimant to qualify for Department approval of training:

(1) The claimant's unemployment is chronic or persistent due to ANY ONE of the following three circumstances:

(a) A lack of basic work skills. A lack of basic work skills may not be established unless a claimant:

(i) Has a history of repeated unemployment attributable to lack of skills,

(ii) has no recent history of employment earning a wage substantially above the federal minimum wage,

(iii) has had no formal training in occupational skills,

(iv) does not have skills developed over an extended period of time by training or experience, and

(v) does not have a MARKETABLE degree from an institution of higher learning, or

(b) A change in the marketability of the claimant's skills has resulted due to new technology, major reductions within an industry, or

(c) Inability to continue working in occupations using the claimant's skills due to a verifiable, permanent physical or emotional disability,

(2) A claimant must have a reasonable expectation for success as demonstrated by:

(a) an aptitude for and interest in the work he is being trained to perform, or course of study he is pursuing,

(b) sufficient time and financial resources to complete the training,

(3) The training is provided by an institution approved by the Department,

(4) The training is not available except in school. For example, on-the-job training is not available to the claimant.

(5) The length of time required to complete the training should generally not extend beyond 18 months. However, it is recognized there are special circumstances where a longer course may be essential to achieve the purposes of a particular state or federal program.

(6) The training should generally be vocationally oriented unless the claimant has no more than two terms, quarters, semesters or similar periods of academic training necessary to obtain a degree. However, it is again recognized that due to the particular requirements of a special program, training which is not vocationally oriented may be approved beyond a two term limit.

(7) A claimant did not leave work to attend school, except as permitted under special state or federal programs, even if the employer required the training for advancement or as a condition of continuing employment,

(8) The schooling is full-time, as defined by the training facility.

R994-403-205. Requirements for Continuation.

Initial approval shall be granted for the school term beginning with the week in which the attendance was reported to the Department. Continued approval may be granted by the Department if the claimant establishes proof of:

(1) Satisfactory attendance,

(2) Passing grades,

(3) Continuance of the same course of study and classes originally approved, and

(4) Compliance with all other qualifying elements.

R994-403-206. Waiver of Requirements.

Exceptions to the Requirements for Department Approval.

(1) The requirements for Department approval may be waived or modified when required by state or federal law for specific training programs.

(2) Short Term Training.

Department approval may be granted even though a claimant has marketable skills and does not meet the requirements for Department approval as defined in R994-403-204 if the training is for eight weeks or less. This is intended as a one-time approval and may not be extended.

KEY: filing deadlines*, registration*, student eligibility, unemployment compensation
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